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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1309.

WILLIAM H. ALEXANDER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED SEPTEMBER 26, 1890.

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1 United States of America, western district of Arkansas, in the circuit court, February term, A. D. 1890.

UNITED STATES
vs.
WILLIAM ALEXANDER. } Murder.

The grand jurors of the United States of America, duly selected, empaneled, sworn, and charged to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That William Alexander, on the 21st day of October, A. D. 1889, at the Creek Nation, in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one David C. Steadman, a white man and not an Indian, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said William Alexander with a certain gun then and there charged with gunpowder and one leaden bullet, which said gun he, the said William Alexander, in his hands then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said David C. Steadman, and that the said William Alexander, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said William Alexander discharged and shot off as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound him the said David C. Steadman in and upon the head, side, back, and belly of him the said David C. Steadman, giving to him the said David C. Steadman then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the gun aforesaid
2 by the said William Alexander in and upon the head, side, back, and belly of him the said David C. Steadman one mortal wound of the depth of four inches and of the breadth of half an inch, of which said mortal wound he the said David C. Steadman then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said William Alexander him the said David C. Steadman, in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

WM. H. H. CLAYTON,
United States Attorney, Western District of Arkansas.

We, the jury, find the defendant, Wm. Alexander, guilty of murder as charged in the within indictment.

(Signed.) J. L. BARKER,
Foreman.

(Indorsed:) No. 2. United States vs. William Alexander. Murder. A true bill. James E. Marshall, foreman. Witnesses: Iverson Cord, Stella James, Benj. James, Sam'l D. House, Newton M. Stephens, James W. Martin, John C. West, James L. Johnson, Sam A. Orcutt, Pleas. McIlhaney, Geo. Lewis, James Bruner. Filed, Feb'y 7th, 1890. Stephen Wheeler, clerk. By I. M. Dodge, D. C.

16154——1

3 FRIDAY MORNING, 9 O'CLOCK, FEBRUARY 7TH, 1890.

UNITED STATES
vs. } Indictment for murder, No. 2.
WILLIAM ALEXANDER.

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorney, and having had hearing of said indictment and it being demanded of him concerning said indictment above specified, and charged upon him how he would acquit himself thereof, he says he is not guilty as charged in said indictment and puts himself upon the country.

FEBRUARY 12TH, 1890.

On this day comes the said defendant by his attorney, and files his application in writing verified upon oath, praying for witnesses in his behalf at the expense of the United States. Said application coming on to be heard, and the court being fully advised in the premises, doth allow the same. It is therefore ordered that the legal expense of procuring the testimony of James Bruner, Caroline Bruner, John Goodnuff, W. A. Davis, Jeff Marshall, Mr. Gladwell, Mrs. Gladwell, and Miss House, in behalf of said defendant, be paid by the United States, and that a subpœna be issued for them returnable May 22nd, 1890, to which time by agreement of parties this cause is hereby continued.

4 WEDNESDAY MORNING, 9 O'CLOCK, APRIL 30TH, 1890.

On this day comes the said defendant by his attorney and files his application in writting verified upon oath, praying for witnesses in his behalf at the expense of the United States.

Said application coming on to be heard and the court being fully advised in the premises doth allow the same.

It is therefore considered that the legal expense of procuring the testimony of Dr. Boyle and Joe Crow, in behalf of said defendant, be paid by the United States, and that a subpœna be issued for them returnable May 22nd, 1890.

JUNE 12TH, 1890.

On this day comes on to be heard the application heretofore filed for witnesses in this cause, and the court being fully advised in the premises doth allow the same.

It is therefore ordered that the legal expenses of procuring the testimony of Wm. Turner, John B. Floyd, and C. J. Phenis, in behalf of said defendant be paid by the United States, and that a subpœna issue for them returnable forthwith.

JUNE 16TH, 1890.

On this day come the defendant by his attorney and files his application in writing verified upon oath, praying for witnesses in his behalf at the expense of the United States.

Said application coming on to be heard and the court being fully advised in the premises doth overrule the same.

JUNE 17TH, 1890.

UNITED STATES
vs.
WILLIAM ALEXANDER. } Indictment for murder, No. 2.

On this day come the United States of America by Wm. H. H.
5 Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorneys, Mess. DuVal & Cravens, and Barnes, and Boudinot & Reed, and it appearing from the returns of the marshal that the said defendant has been served with a duly certified copy of the indictment in this cause, and a full and complete list of the witnesses in this cause; and has also been served with a full and complete list of the petit jury, as selected and drawn by the jury commissioners for the present term of this court, more than two entire days heretofore; and having heretofore had hearing of said indictment and pleaded not guilty thereto, it is on motion of plaintiff by their attorney ordered that a jury come to try the issue joined. Whereupon the clerk called the entire panel of the petit jury and after challenge by both plaintiff and defendant, the following were selected for the trial of this cause, to wit:

Jarvis L. Barker.	David Coulson.	Nat Jackson.
Elias R. Breeden.	Geo. W. Cooper.	Henry St. Clair.
Joseph H. Criner.	John M. Haines.	Robert Henderson.
Allen D. Chandler.	Jeremiah J. Henson.	Langdon Sutton.

Twelve good and lawful men of the district aforesaid, duly selected, empannelled and sworn to try the issue joined, and a true verdict render according to the law and the evidence; and after hearing a portion of the evidence and there not being time to further progress in the trial of this cause, they were put in charge of the sworn ba'liff aforesaid.

And it is further ordered by the court that the marshal of this district furnish meals and lodging for this jury and ba'liff in charge, and that the jury be kept together until discharged by order of said court.

6 JUNE 18TH, 1890.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant, in custody of the marshal and by his attorneys, Mess. Du Val and Cravens and Barnes, Boudinot and Reed, and now come the jury, heretofore empanelled for the trial of this cause, in charge of the sworn ba'liff of this court, to wit,

Jarvis L. Barker,	David Coulson,	Nat Jackson,
Elias R. Breeden,	Geo. W. Cooper,	Henry St. Clair,
Joseph H. Criner,	John M. Haines,	Robert Henderson,
Allen D. Chandler,	Jeremiah J. Henson,	Langdon Sutton,

Who took their seats in the jury box and, after hearing further evidence and there not being time to further progress in the trial of this cause, they were put in charge of the sworn ba'liff aforesaid.

JUNE 19TH, 1890.

On thi*d* day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkans's, and come the said defendant, in custody of the marshal and by his attorneys, Mess. Du Val

and Cravens and Barnes, Boudinot and Reed, and now come the jury, heretofore empannelled for the trial of this cause, in charge of a sworn ba'liff of this court, to wit,

Jarvis L. Barker,	David Coulson,	Nat Jackson,
Elias R. Breeden,	Geo. W. Cooper,	Henry St. Clair,
Joseph H. Criner,	John M. Haines,	Robert Hepderson,
Allen D. Chandler,	Jeremiah J. Henson,	Langdon Sutton,

Who took their seats in the jury box and, after hearing the balance of evidence and there not being time to further progress in the trial of this cause, they were put in the charge of the sworn ba'liff aforesaid.

7 JUNE 20TH, 1890.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the defendant, in custody of the marshal and by his attorneys, Mes. Du Val and Cravens and Barnes, Boudinot and Reed, and now come the jury, heretofore empannelled for the trial of this cause, in charge of a sworn ba'liff of this court,

Jarvis L. Barker,	David Coulson,	Nat Jackson,
Elias R. Breeden,	Geo. W. Cooper,	Henry St. Clair,
Joseph H. Criner,	John M. Haines,	Robert Henderson,
Allen D. Chandler,	Jeremiah J. Henson,	Langdon Sutton,

Who took their seats in the jury box and, after hearing the argument of the counsel and therein not being time to further progress in the trial of this cause, they were put in charge of the sworn ba'liff aforesaid.

JUNE 21ST, 1890.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant, in custody of the marshal and by his attorneys, Mes. Du Val and Cravens and Barnes, Boudinot and Reed, and now comes the jury, heretofore empannelled for the trial of this cause, in charge of the sworn ba'liff of this court, to wit,

Jarvis L. Barker,	David Coulson,	Nat Jackson,
Elias R. Breeden,	Geo. W. Cooper,	Henry St. Clair,
Joseph H. Criner,	John M. Haines,	Robert Henderson,
Allen D. Chandler,	Jeremiah J. Henson,	Langdon Sutton,

Who took their seats in the jury box and, after receiving the charge of the court, retired in charge of the sworn ba'liff aforesaid to consider of their verdict, and after some time returned into court the following verdict, to wit:

"We, the jury, find the defendant, William Alexander, guilty of murder as charged in the within indictment."

(Signed) J. L. BARKER,
Foreman.

On motion of the defendant, by his attorneys, the jury was polled and each answered for himself that the verdict read by the court was his verdict. Whereupon the jury was by the court discharged from the further consideration of the case, and the said defendant remanded to the custody of the marshal to await final sentence.

8 In the district court of the United States for the western district of Arkansas, May term, 1890.

SATURDAY MORNING, 9 O'CLOCK, AUG. 2, 1890.

Court met pursuant to adjournment. Present, the honorable I. C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES
vs.
WILLIAM ALEXANDER. } Indictment for murder No. 2.

On motion of Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, the said defendant, William Alexander, was brought to the bar of the court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty, heretofore returned against him by the jury in this cause on the 21st day of June, 1890, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon, the premises being seen and by the court well and sufficiently understood, it is considered by the court that the said marshal of the district aforesaid cause the said William Alexander to be taken hence, and him, the said William Alexander, safely and securely keep, from the date hereof until Wednesday, the 1st day of October, A. D. 1890, and on that day and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day the said marshal cause the said William Alexander to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Wednesday, the said day of October, in the year of our Lord one thousand eight hundred and ninety, cause the said William Alexander to be hanged by the neck until he is dead.

And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal, with a full and true account of the execution of the same.

UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of the circuit court of the United States for the western district of Arkansas, hereby certify that the above and foregoing is a true and correct copy of the judgment, sentence, and order in the above entitled cause as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Fort Smith, in said district, this 2 day of August, A. D. 1890.

STEPHEN WHEELER, *Clerk.*
I. M. DODGE, *D. C.*

9 In the circuit court of the United States for the western district of Arkansas.

UNITED STATES
vs. } Murder.
WILLIAM H. ALEXANDER.

Be it remembered, that on the trial of the above entitled cause, the court directed two lists of thirty-seven qualified jurymen to be made out by the clerk, and one given to the district attorney, and one to the counsel for the defendant; and the court further directed each side to proceed with its challenges independent of the other, and without knowledge on the part of either as to what challenges had been made by the other. To which method of proceeding in that regard defendant at the time offered no objections, but proceeded to make his challenges, and in so doing challenged two jurors, to wit, C. F. Needles and Samuel Lawrence, who had been, also, challenged by the Government, as appears from the two lists of jurors used by the Government in making its challenges, and the defendant in making his challenges.

The following is an exact copy of said jury lists:

10 *List of petit jurors summoned and in attendance at the May term, A. D. 1890, of the district and circuit courts of the United States for the western district of Arkansas, which was begun and held at Fort Smith, in said district, on the 5th day of May, 1890*

D	1.	[James D. Albaugh]	Washington County.
	2.	[John W. Andrews]	Boone "
D	3.	[Daniel S. Alstat]	Sebastian "
	4.	Jarvis L. Barker 1	Washington "
D	5.	[Luther R. Berkley]	Franklin "
D	6.	[Charles W. Baker]	Washington "
	7.	Elias R. Breeden 2	Crawford "
	8.	[William R. Cowan]	Madison "
	9.	Joseph H. Criner 3	Newton "
D	10.	[Evan Creekmore]	Crawford "
	11.	Allen D. Chandler 4	Crawford "
	12.	[William F. Clift]	Sebastian "
	13.	David Coulson 5	Boone "
	14.	[William M. N. Clemshire]	Boone "
	15.	George W. Cooper 6	Newton "
	16.	[George H. Carson]	Sebastian "
	17.	[Doolv F. Cox]	Marion "
D	18.	[Franklin W. Dunn]	Sebastian "
D	19.	Felix Guthrie	Newton "
	20.	[George T. Galloway]	Carroll "
	21.	[William A. Hayes]	Crawford "
	22.	John M. Haines 7	Johnson "
D	23.	[Robert Henderson]	Newton "
	24.	Jeremiah J. Henson 8	Crawford County.
D	25.	[George W. Hancock]	Logan "
	26.	Nat Jackson 9	Yell "
	27.	[Elisha C. Key]	Newton "
D	28.	[William Logue]	Washington "
D	29.	[William F. Murray]	Newton "
D	30.	[Hugh McClure]	Carroll "
	31.	[John Murphy]	Boone "
	32.	[Andrew J. Phillips]	Benton "
	33.	[John M. Robinson]	Madison "
	34.	[Anton Schuster]	Sebastian "
D	35.	[George W. R. Smith, jr.]	Madison "
	36.	[Eugene A. Sealy]	Sebastian "
D	37.	[Edward Thompson]	Yell
	38.	[James C. Wilkerson]	Sebastian "
		Henry St. Clair 10	
		[Porter A. Savage]	

NOTE BY PRINTER—Names in [ ] are erased in copy.

List of petit jurors summoned and in attendance at the May term, A. D. 1890, *etc.*—Cont'd.

D [C. F. Needles] G
Robert Henderson H
[J. S. Bostic]
D [Samuel Lawrence] G
[Martin Bridges]
[John Armstrong]
Langdon Sutton I2
D [John C. Whiting]
D [Fred I. Dean]
[Alex May]
[William F. Ward]
[James Turner]
[Geo. W. Gunder]
Frank Kane
[J. P. Franklin]
D [W. H. Jacobs]
William Holmes
[Andrew Rogers]
[Jack Reynolds]

THE UNITED STATES OF AMERICA,
Western district of Arkansas.

I, Stethen Wheeler, clerk of the district and circuit courts of the United States for the western district of Arkansas, do hereby certify that the foregoing is a true and correct list of the petit jurors summoned and in attendance at the May term, A. D. 1890, of said court. In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Fort Smith, in said district, this day of May, A. D. 1890.

———— ————, *Clerk.*
By ———— ————, *Deputy Clerk.*

11 *List of petit jurors summoned and in attendance at the May term, A. D.* 1890, *of the district and circuit courts of the United States for the western district of Arkansas, which was begun and held at Fort Smith, in said district, on the 5th day of May,* 1890.

1. James D. Albaugh ..... Washington County.
2. [John W. Andrews] ..... Boone "
3. Daniel S. Alstat ..... Sebastian "
4. Jarvis L. Barker ..... Washington "
5. Luther R. Berkley ..... Franklin "
6. Charles W. Baker ..... Washington "
7. Elias R. Breeden ..... Crawford "
8. [William R. Cowen] ..... Madison "
9. Joseph H. Criner ..... Newton "
10. Evan Creekmore ..... Crawford "
11. Allen D. Chandler ..... Crawford "
12. [William F. Clift] ..... Sebastian "
13. David Coulson ..... Boone "
14. [William M. N. Clemshire] ..... Boone "
15. George W. Cooper ..... Newton County.
16. [George H. Carson] ..... Sebastian "
17. [Dooly P. Cox] ..... Marion "
18. Franklin W. Dunn ..... Sebastian "
19. Felix Guthrie ..... Newton "
20. [George T. Galloway] ..... Carroll "
21. [William A. Hayes] ..... Crawford "
22. John M. Haines ..... Johnson "
23. Robert Henderson ..... Newton "
24. Jeremiah J. Henson ..... Crawford County.
25. George W. Hancock ..... Logan "
26. Nat Jackson ..... Yell "
27. [Elisha G. Key] ..... Newton "
28. William Logue ..... Washington "
29. William F. Murray ..... Newton "
30. Hugh McClure ..... Carroll "

NOTE BY PRINTER.—Names in brackets [ ] are erased in copy.

List of petit jurors summoned and in attendance at the May term, A. D. 1890, etc.—Cont'd.

31. [John Murphy] ..... Boone County.
32. [Andrew J. Phillips] ..... Benton "
33. [John M. Robinson] ..... Madison "
34. [Anton Schuster] ..... Sebastian "
35. George W. R. Smith, jr ..... Madison "
36. [Eugene A. Scaly] ..... Sebastian "
37. Edward Thompson ..... Yell "
38. [James C. Wilkerson] ..... Sebastian "

Henry St. Clair .....
[Porter A. Savage] .....
[C. F. Needles] G .....
[J. S. Bostin] G .....
[Samuel Lawrance] G .....
Martin Bridges .....
[John Armstrong] G .....
[Langdon Sutton] .....
John G. Whiting .....
Fred Ideem .....
[Alex May] .....
[William F. Ward] .....
[James Turner] .....
[Geo. W. Gunder] .....
Frank Kane .....
[J. P. Franklin] .....
W. H. Jacobs .....
William Holmes .....
[Andrew Rogers] .....
[Jack Reynolds] .....

NOTE by PRINTER.—Names in brackets [ ] are erased in copy.

UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stethen Wheeler, clerk of the district and circuit courts of the United States for the western district of Arkansas, do hereby certify that the foregoing is a true and correct list of the petit jurors summoned and in attendance at the May term, A. D. 1890, of said court. In testimony whereof I have hereunto set my hand and affixed the seal of said court at Forth Smith, in said district, this day of May, A. D. 1890.

——— ———, *Clerk.*
By ——— ———, *Deputy Clerk.*

12 To the happening of the fact that both parties challenged the same two jurors, the defendant offered no objection at the time.

Thereupon the Government, to maintain the issues upon its part, produced the following-named witnesses, to wit:

William Perryman, Stella James, B. J. James, J. W. Martin, T. K. Hogan, J. L. Guffy, J. W. James, James Bruner, John C. West, Newton M. Stephens, Iverson Card, B. D. Moody, James Bruner (recalled), Samuel A. Orcutt, A. D. Orcutt, Pleasant McElhaney, Mrs. Georgie House, Iverson Card (recalled), George Lewis, Lena Lewis, and W. W. Bailey, M. D., who testified respectively as follows:

13 JUNE 17TH, 1890, 4.00 P. M.

WILLIAM PERRYMAN.

Col. CLAYTON. Mr. Perryman, state your name?
A. William Perryman.
Q. Mr. Perryman, you are a Creek Indian, are you not?
A. Yes, sir.

Q. You live in the Creek Nation?
A. Yes, sir.
Q. Did you know a man by the name of D. C. Steadman, in his lifetime?
A. No, sir.
Q. Do you know the defendant, William Alexander?
A. I have seen him a few times.
Q. When did you first see this defendant?
A. I saw him about a week before the body—at least the bones—of Mr. Steadman were found.
Q. Where did you see him?
A. About a quarter of a mile this side—him and Jim Bruner together—about a quarter of a mile this side of where Steadman was killed.
Q. He and Jim Bruner together?
A. Yes, sir.
Q. This colored man?
A. Yes, sir.
Q. Coming this way?
Col. CRAVENS. Which way?
14 Col. CLAYTON. Going east; you passed him east of where the body was found?
A. Yes, sir.
Q. On the prairie, east of the woodland?
A. Yes, sir; at the edge of the timber.
Q. Now, Mr. Perryman, when did you next see—do you know what his business was on that occasion?
A. He was making inquiries for his partner.
Q. Making inquiries for his partner?
A. Yes, sir.
Q. What did he say about it?
A. He said that his partner was missing, and he could not hear nothing about him, and he had been around to see if he could see anything of him.
Q. That was about a week before the body was found?
A. Yes, sir.
Q. When did you next see him after that?
A. About Tuesday evening, about the 3rd day of November, if I am not mistaken.
Q. Let me go back to that first meeting; You say he told you he was looking for his partner; did he say his partner was lost?
A. Yes, sir.
Q. Did he tell you anything else about it?
A. No, sir; that is all he said.
Q. Did he say as to whether his partner took anything with him?
A. No, sir; he never said.
Q. Then you say you saw him again about the 3rd of November?
A. Yes, sir.
Q. Where did you see him?
A. At my house; and how came he to come up to my house, I had heard a dead body had been found down there near Meagher's field,
15 and I wrote to him; I had been informed by Ben Island that a body had been found north of Meagher's field, and I wrote a note about it.

Q. Who did you write that note to?

A. I don't know exactly, but I think it was Jim Bruner; I don't know exactly.

Q. [Handing witness note.] See if that is the note you wrote.

A. Yes, sir.

Q. Why did you write it to Jim Bruner?

A. I didn't know his name and I heard he was stopping at Jim Bruner's.

Col. CRAVENS. Let's see the note.

Col. CLAYTON. Hand it to the gentleman; I neglected that.

Col. CLAYTON. Now, Mr. Perryman, please read that note.

A. "Mr. Jim Bruner"——

Q. What is the date of it?

A. Mr. Jim Bruner. "I heard that the' is a man that is staying with you lost his partner. If he is not found him tell him to come to my house right away. No more at present. William Perryman."

Col. CLAYTON. That is in your handwriting?

A. Yes, sir.

Q. You sent that note to Jim Bruner?

A. Yes, sir.

Q. Did you send any other note?

A. No, sir.

Q. That is the only one?

A. Yes, sir.

Col. CLAYTON. I will introduce that note in evidence, and you may mark it "Exhibit A." (Note hereto attached, marked "Exhibit A.")

Q. Now, you sent that note to Jim Bruner?

A. Yes, sir.

Q. Who did you send it by?

A. I sent it by a boy by the name of Sam——

16 The COURT. Did you put any date on it?

A. No, sir.

Col. CLAYTON. There is something on the back of the note; will you look at it and see what that is (handing witness note)? It is in your handwriting.

Col. CRAVENS. I would like to get the date of it. There is something on the back that looks like a date.

A. That is "Haste. News."

Col. CLAYTON. That meant to get it there quick?

A. Yes, sir.

Q. There is no date on it. Who did you send it by?

A. Sam. McKinney.

Q. How long after you sent that letter to Jim Bruner was it before Alexander came to your place?

A. They come about as quick as they could get there.

Q. How far did you live from there?

A. About 4 or 5 miles

Q. What direction?

A. I lived right east of them.

Q. Did anybody come with Alexander?

A. Iverson Card came with him.

Q. The two came together?
A. Yes, sir.
Q. What time in the day did they get to your house?
A. It was very late in the evening.
Q. The same evening you sent the letter?
A. Yes, sir.
Q. What talk did you have with him then about it?
A. I told him that Ben Island told me he had found a dead body up there north of Meagher's field, and he was a Creek Indian and couldn't talk any English, and requested me to send word to him——

Q. Island was a Creek Indian?

17 A. Yes, sir; that was my reasons for writing, because I didn't know who did the killing, and I might send word by the wrong man.

Q. Well, did you have any talk with him about his partner?
A. Well, about all I can recollect that we talked about is that I told him that it was too late to make out to the place that evening, from what Ben Island told me——
Q. You hadn't been up to the body?
A. No, sir; I told them they might stay all night, and we would go up the next morning, and they said they had come down in a hurry, and at least Card hadn't let his family know where he was going, and there was quite an excitement there, and they would be anxious about them, and I told them then I would get Ben Island and I will meet 'em on the north side of Meagher's field the next morning, and we met down there——
Q. Did he say anything to you about his partner disappearing?
A. Well, I had heard about it——
Q. Did he tell you?
A. No, sir; he didn't tell me.
Q. Then they left, did they?
A. Yes, sir.
Q. Now, then, Mr. Perryman, go on and state what occurred the next day.
A. Well, the next morning we met there and searched around.
Q. Did you have Ben Island with you?
A. Yes, sir.
Q. You searched around and you found—tell us about what you found.
A. Well, we found him; of course we had a man along that knowed where the man was.

Q. Where did you find the bones?

18 A. I don't know the exact distance, but I judged it to be about 60 or 70 yards north of Meagher's field.

Q. How far from the corner of the field?
A. It was about 300 yards, as near as I can recollect; I don't know exactly.
Q. About 300 yards east, west, north, or south?
A. About 300 yards northwest of the corner of the fence.
Q. 300 yards northwest of the northeast corner of the field?
A. Yes, sir.
Q. 60 yards from the road?
A. Yes, sir.

Q. Open land or wood land?

A. It was right in the briars, and thickety.

Q. Was it pretty thickety?

A. Yes, sir; it was nothing but green briars and a lot of brush, and there was no open land, only where the hogs had mashed it down.

Q. Had it grown up with weeds?

A. Yes, sir; we called them rice weed.

Q. Rice weed and green briar?

A. Yes, sir.

Q. You found bones there. Please state whether they were human bones.

A. They was human bones.

Q. You found them. Please state all that you found.

A. Well, we found some pieces of paper, and his gun and his bones; of course there was some of them that was mashed up by the hogs and entirely took off.

Q. Would you know his gun if you would see it?

A. I don't know, sir.

Q. You found the gun?

A. Yes, sir.

19 Q. You found the bones. Was the skull intact?

A. No, sir; it was all mashed up.

Q. Was there any meat on the bones?

A. No, sir; only down about his legs, and in his boots, and on the ends of his fingers; all of it was most eat off. The hogs had drug him, and the skin was wrapped around a bush, and they couldn't get it any further; they had drug it some distance from where it first laid.

Q. No meat on the head?

A. No, sir.

Q. How did you find the skull?

A. It was mashed all up in small pieces.

Q. Could you see any marks or indications on it?

A. We could see one bullet hole; looked about the size of a number two buckshot, in a piece of his skull, and the rest was all busted up so we couldn't tell anything about it.

Q. Did you find any clothing?

A. There was clothing, but it was all tore up by the hogs.

Q. Did you find a hat?

A. Yes, sir; there was a hat there.

Q. What did you do with the hat and skull?

A. Well, they just gathered them up and went back to the store to get a box to bury them in, and I was on my way to Verdigris, and I went with them, and I left them there at the store.

Q. You don't know whether the skull and bones were brought here or not?

A. No, sir.

Q. Examine that hat and see if that is the hat [handing witness hat].

A. I couldn't swear as to the hat, but it looks like the same hat.

Q. (Handing witness gun.) Examine that gun and see if that

20 is the gun?

A. That also looks like the gun; there was one load in it.

Q. Is there a load in it now?

BAILIFF. No, sir; it is not loaded.

Col. CRAVENS. It is a breech-loader?

A. Yes, sir.

Col. CLAYTON. Examine that and see if that is a piece of the skull [handing witness piece of skull].

A. Yes, sir; that is the piece; there is the piece you could see like it was done with a number 2 buckshot.

Q. It was in that condition when you found it?

A. Yes, sir.

Q. These other pieces you can't say?

A. They was all busted up, but it was just that way.

Q. You just had to pick them up by pieces?

A. Yes, sir.

The COURT. Where is that hole?

Col CLAYTON. I don't see any indications to tell where it was, but we will have a doctor here to identify it. (To witness.) You say that the skull was mashed up that way?

A. Yes, sir.

Q. How were the other bones?

A. There was nothing but his arm bones and pieces of his hip bones and thigh bones; I don't recollect, but I don't think there was anything but them and the pieces of his head there.

[Col. Clayton shows pieces of skull to the jury.] (To witness.) Of course you don't know who that was?

A. No, sir.

Q. Was the defendant there?

A. Yes, sir.

Q. Did you hear him say anything as to whose body it was?

A. Yes; he said it was his partner's body.

21 Q. Did he tell you how he knew?

A. Yes, he said he knowed his gun, and also knowed his spurs. He had on a large pair of spurs.

Q. You found a pair of spurs?

A. Yes, sir.

The COURT. Were they on his feet?

A. Yes, sir; they were fastened on his boots, here.

The COURT. What else did he say?

A. He never said anything.

Col. CLAYTON. He said he knew his spurs, and knew his gun; did he say anything else?

A. I don't recollect.

Q. Anything else besides his gun and spurs?

A. No, sir; any more than there was some papers; of course——

Q. Did you find some papers?

A. We found some papers there, and Jo St. Clair was the man that read them; and it said something about Steadman.

Q. Did you find a piece of a book?

A. Yes, sir; his pocket book was found there, and it——

Q. Did it have his name on it?

A. Yes, sir; there was several pieces found with his name on it.

Q. Whose name?

A. Steadman; I don't recollect the other name.

Q. There was several pieces of paper that had his name on it?

A. Yes, sir.

Q. Defendant knew him by the gun, and by the spurs, and by these papers, I suppose?

A. Yes, sir.

Q. Did you hear defendant say anything about how much money his partner had when he left?

22 A. Yes, sir; he said his partner must have had between six and seven hundred dollars.

Q. Did he say whose money it was?

A. He said there was some of it that was to be divided between them.

Q. Did he say what it was?

A. He said it was a good deal of it in greenback, and the balance of it in gold.

Q. Did he say how he had the greenback?

A. He said he had the greenback in a large book and the gold in one of these buck-skin purses.

Q. When did he tell you that?

A. The day that we gathered up the bones.

Q. Did he say anything else to you about it that you remember?

A. Not as I can recollect.

Q. Well, look at these spurs and see if those are the spurs that were found [handing witness spurs].

A. Well, I couldn't swear exactly to them, but they was just that sized spurs.

Q. They are similar to them?

A. Yes, sir.

Q. Where were these spurs?

A. They were fastened on his feet here.

Q. Boots still on him?

A. Yes, sir.

Q. And the spurs still on his boots?

A. Yes, sir.

Q. Where was his gun lying?

A. About three feet from where the body had first lied; you could tell where the body had lain, where the hogs had tramped around; it was wet, muddy weather, and they had made a mush out of it, and then drug it out.

Q. This was in November?

A. Yes, sir.

Q. Did the body smell bad?

23 A. Well, not very bad, of course; there wasn't none of it to smell.

Q. It had been eaten up?

A. Yes, sir.

Q. Any intestines—guts—there?

A. I don't think there was; all gone.

Q. You saw hog tracks there; are you certain they were hogs?

A. Yes, sir; they had made beds there, and had been sleeping there at the place.

Q. Did you look for tracks?

A. Yes, sir; we searched around as close as we could, but it was right in the thick brush, and there was lots of leaves, and we couldn't tell anything.

Q. Any big trees?

A. Yes, sir; large timber.

Q. And this undergrowth was very brushy, and lots of large timber, too?

A. Yes, sir.

Q. Now, that was about 60 yards to the right of the road as you go west?

A. Yes, sir; going down to Lipscomb's store.

Q. (Showing witness map.) Meagher's field is a pretty big field?

A. Yes, sir.

Q. Wire fence around it?

A. Yes, sir.

Q. How many acres?

A. I don't know exactly; I am told 800 acres.

Q. The road ran along the north side of it?

A. Yes, sir; and turns to the right a ways and strikes Lipscomb's field.

Q. Then it goes along the side of Lipscomb's field to Lipscomb's store, and then goes on to Scott Gentry's, and then on down here near by Jim Bruner's?

A. Yes, sir.

Q. That is where you understand they were camped?

A. Yes, sir.

24 Q. It was northwest of the corner, about 300 yards, where you found the body?

A. Yes, sir.

Q. And 60 yards up that way from the road?

A. Yes, sir; I don't know exactly, but I judged it to be about 300 yards.

Q. Was there a house in there?

A. Yes, sir; I guess about 60 or maybe 70 yards from the corner of the field.

Q. Whose house is that?

A. It belongs to Meagher, but it is called the Rabbit House.

Q. Why?

A. Because a man by the name of Rabbit helped build it, and that is why it is called the Rabbit House.

Q. Yes, sir; that is what I wanted to get at. You think it is about 60 or 70 yards from the corner?

A. Yes, sir; it may be more; it may be 100; I never took no notice of it.

Q. You lived over this way?

A. Yes, sir; I lived right east of it.

Q. How far from the body?

A. About 3 miles.

Q. Then the body must have been about 2 miles from Jim Bruner's?

A. Yes, sir.

Q. You say you live five miles from Jim Bruner's, and it is three miles to your house from where the body lay?

A. Yes, sir; I guess it must have been three-fourths of a mile down to Lipscomb's store.

Col. CRAVENS. From where the body lay?

A. Yes, sir.

Col. CLAYTON. Do you know where Fort Gibson is?

A. Yes, sir.

Q. What direction from you?

A. Right due east.

25 Cross-examination:

Col. CRAVENS. How far do you live from Fort Gibson?

A. I don't know, but judge it to be about 20 miles?

Q. Do you live between the Arkansas and the Verdigris.

A. Yes, sir.

Q. How far from the Arkansas?

A. About two mile I think.

Q. How far from the Verdigris.

A. About eight or ten miles.

Q. That is north?

A. Yes, sir.

Q. And the Arkansas south?

A. Yes, sir.

Q. When you sent this note over by this boy, you sent it by Sam McClintock. Is he here?

A. No, sir.

Q. Do you know who he delivered the note to?

A. I don't know exactly; I never asked him.

Q. Did the three come back together?

A. The boy stopped; he come back as far as his place, and the other two come on.

Q. He come back as far as his home?

A. Yes, sir; he lived right in sight of my house.

Col. CLAYTON. Who was that?

A. Sam McClintock, the boy that delivered the note.

Col. CRAVENS. The boy is not here?

A. No, sir.

Q. Do you know what day of the week this was?

A. It was on Tuesday.

Q. What was the name of that boy that found the body?

A. It was a man; his name was Ben Island.

Q. Is he here?

A. No, sir.

Q. What time in the day was it you sent the boy over?

A. It was in the afternoon, on Tuesday.

26 Q. Tuesday night—Tuesday evening—that they got to your place?

A. Yes, sir; that evening, just before sundown.

Q. Iverson Card and Alexander?

A. Yes, sir.

Q. They got there, you think, as quick as they had time, after your note got there?

A. Yes, sir.

Q. Where did Card live at that time?

A. Sir?

Q. Bruner wasn't there?

A. No, sir.

Q. Do you know where Bruner lived?

A. They lived close together; Card lived kind of northeast of him.

Q. That would be between where Bruner lived and where you lived?

A. Yes, sir.

Q. You live east of Bruner?

A. Yes, sir.

Q. And Card lived between you and Bruner?

A. Yes, sir; they both was living on Gentry's place.

Q. They didn't stay all night, but they returned, because there was considerable excitement. (No response.)

Q. What did they tell you the excitement was about?

A. They said there was a crowd of armed men hunting Mrs. House and this here Steadman, accusing him of running off with her.

Q. Crowd of armed men hunting this woman and Mr. Steadman?

A. Yes, sir.

Q. And that was the case of the excitement?

A. Yes, sir.

Q. Do you know when this woman is said to have disappeared, Mr. Perryman?

A. No, sir; I don't know.

Q. Could you figure out on what day of the month this was?

A. It was on the 3rd or 4th, I don't know exactly, of November.

27 Q. 3rd or 4th, one or the other.

A. Yes, sir.

The COURT. That is the day before you found the body.

A. Yes, sir.

Col. CRAVENS. When did Island report to you he had found the body?

A. On Monday evening.

Q. When did he first tell you about it—Ben Island?

A. He told me on Monday evening that he had found it on Sunday.

Q. He had found it the day before.

A. Yes, sir.

Q. What time of day did he say he found it?

A. I never asked him; he said he was out hunting.

Q. Did he say he found it Sunday morning.

A. I don't recollect.

Q. He found it on Sunday, and on Monday evening reported to you. Why did you wait until Tuesday before you sent the letter.

A. I sent him Tuesday, because I didn't have anything suitable to write with.

Q. What time of day did Ben Island tell you.

A. Very late in the evening.

Q. Where did you see him?
A. I was at his house.
Q. Where does he live?
A. About three-fourths of a mile west of me.
Q. What direction do you live from where the body was found.
A. East.
Q. How far?
A. I guess about three miles.
Q. And Ben Island lives about three-fourths of a mile west of you, towards where the remains were found.
A. Yes, sir; not over three-quarters of a mile.
28 Q. He told you late Monday evening, and it was late Monday evening before you sent word over——
A. Late Tuesday evening.
Q. Yes, I mean Tuesday evening. How long was that after you had seen defendant here, with Jim Bruner, riding around up there?
A. As near as I can recollect about a week; I don't know exactly to the day, but about that.
Q. Did you measure the distance from the body to the road or step it?
A. No, sir.
Q. You are just guessing at it?
A. Yes, sir; that is the reason I say about 60 or 70 yards; of course I don't know exactly how many.
Q. You didn't measure the distance from there up to the corner of the field.
A. No, sir.
Q. Just guessing at that.
A. I didn't have any idea I would be called down here.
Q. How far did you say it was to the corner of the field?
A. About 300 yards.
Col. BARNES. Which corner?
A. The northeast corner.
Col. CRAVENS. The corner towards your house?
A. Yes, sir.
Q. About how far was it down to the other corner?
A. Near a mile.
Col. CLAYTON. If the field was square, and contained 640 acres, it would be a mile, and he says it has 800 acres in it.
Col. CRAVENS. How far did you say it was from opposite the body to the corner of the field next to Choska, the northwest corner of the field?
29 A. I guess it must have been something near a mile.
Q. How far is it from the corner of Meagher's field to the corner of Lipscomb's field east of Choska—the nearest corner of the Lipscomb's field?
A. I guess about 400 yards.
Q. How far from the corner of Lipscomb's field down to the store at Choska?
A. Pretty near three-fourths of a mile.
Q. It would be nearly two miles from the remains, down to the Choska?

A. Yes, sir; something near that.
Q. Then how far from the store to Bruner's?
A. Well, I guess it is about three-fourths of a mile.
Q. That would be in a southwest direction from the store?
A. Very little west.
Q. Nearly due south.
A. Yes, sir.
Q. Well, now Mr. Perryman, how many houses are there along the north side of that field, if you remember; that is the road you take, that runs along the north side of Meagher's field?
A. Yes, sir.
Q. Meagher's enclosure; it isn't a field; it is woodland?
A. Yes, sir; most of it isn't cleared.
Q. The timber on the inside is large timber, and full of undergrowth and canes?
A. Yes, sir.
Q. How long has the field been enclosed?
A. I don't know exactly; must have been two or three years.
Q. Undergrowth and cane grown up since that?
A. It was an awful thickety place before it was fenced.
30 Q. How many houses are there?
A. There wasn't but the one finished house, as well as I remember, at the time the body was found; there is more now.
Q. Where was that finished house?
A. Up there near the northeast corner; the Rabbit House, and there is another little house setting on the outside of the field, down there between five and six hundred yards from where Steadman's body was found.
Q. West of that?
A. Yes, sir.
Q. Towards Choska?
A. Yes, sir; it was't finished.
Q. Was it occupied at that time.
A. No, sir.
Col. CLAYTON. Who occupies it now.
A. I don't know the name of the parties; there is a widow woman living there.
Col. CRAVENS. I will ask you if the north part of that field, next to the west side, isn't in cultivation?
A. Not all of it.
Q. Considerable part of it?
A. The biggest part of it isn't.
Q. Well, in the northwest corner; isn't there a strip along the north side, and towards the west?
A. Yes, sir; but then the strip has been cut out since Steadman was found.
Q. When; in this last year?
A. Yes, sir.
Q. That was a wire fence?
A. Yes, sir.
Q. High wire?
A. Eight wires high.

Q. It makes a high fence?

A. It is not very high; they was put pretty close together; it was put that way, a little closer than general; it was put that way so as to keep the hogs out.

Q. I will ask you if there wasn't a space cut out between the
31 fence, on the inside of the fence, next to the fence?

A. But not at the time Mr. Steadman was found; there was a piece cleared out and had been in cultivation.

Q. I am talking about the fence row?

A. There was a fence row cut out about 60 feet.

Q. I will ask you if there wasn't about 30 or 40 feet on the inside, and if the weeds hadn't grown up pretty high?

A. Yes, sir; but they cut them down again.

Q. This spring or last winter?

A. Yes, sir.

Q. They hadn't cut them down last fall?

A. No, sir; they cut them down since last fall.

Q. Since the body was found. I will ask you if they wasn't very high, and very thick?

A. Yes, sir.

Q. And if that isn't always the case where the ground is cleared, if the weeds don't grow up. That is rich bottom-land?

A. Yes, sir; it is rich land.

Q. Weeds grow usually very high there?

A. Yes, sir; at times.

Q. This man Card—I don't know his name—was he an Indian?

A. No, sir; he was a yellow man.

Q. Colored man?

A. Yes, sir; raised in the State and married in the Creek Nation.

32 STELLA JAMES.

Col. CLAYTON. What is your name?

A. Stella James.

Q. Now speak out loud so all these gentlemen can hear you; all these gentlemen in the court room want to hear you. Mrs. James, do you know the defendant, Mr. Alexander?

A. Yes, sir.

Q. Did you know Mr. Steadman in his lifetime?

A. Yes, sir.

Q. How often had you seen him before his death?

A. I had seen him several times; I can't tell you just how many times.

Q. Do you know how long these two men had been in the country?

A. No, sir, about two weeks I reckon.

Q. Do you remember the day Mr. Steadman is said to have disappeared from the country?

A. Yes, sir.

Q. Where were you upon that day?

A. At home.

Q. Where were you living at that time?

A. On Mr. Meagher's farm, at the Rabbit House.

Q. That is in the northeast corner of the field?
A. Yes, sir.
Q. Is the house inside of the field, or outside of it?
A. Inside.
Q. (Showing witness map.) This is the field, and this is west, and this east; that would be about the right place for it; it is marked near the corner?
A. Yes, sir.
Q. That is the house known as the Rabbit House?
A. Yes, sir.
Q. Now, Mrs. James, you lived there at that time?
A. Yes, sir.
Q. On the evening of the day that Mr. Steadman was missing, where were you?
A. I was at home.
Q. Please state if you saw him or Alexander, or both of them upon that evening?
33 A. Yes, sir; I seen both of them.
Q. Where were they?
A. Riding along the road.
Q. Which way were they going?
A. Towards the store.
Q. Mr. Steadman's store?
A. They were going towards Mr. Lipscomb's store.
Q. Going west then?
A. Yes, sir.
Q. Were they riding or walking?
A. They were riding.
Q. Did you notice what kind of horses they were riding?
A. Yes, sir.
Q. What kind?
A. Steadman was riding a bald-faced sorrel, and Mr. Alexander was riding a bay horse.
Q. Now, then, did they have anything with them?
A. Yes, sir; they both had a gun.
Q. Each one of them?
A. Yes, sir.
Q. What time of day was it?
A. I couldn't tell you; it was pretty near sundown; the sun was about half an hour high.
Q. Well, how far could you see them going up the road?
A. About 150 or 200 yards.
Q. Please state what occurred after that.
A. I heard some guns go off.
Q. How long after they passed that place that you heard some guns fired?
A. About 5 minutes.
Q. How many?
A. About eight.
Q. Where was your husband at that time?

A. He had went down on the slough down there, to see if he could see some ducks down there, and he went to see if he could kill some.

Q. He wasn't at home at the time you heard the shooting?

34 A. No, sir.

Q. Did you see anything more of them.

A. No, sir; I didn't.

Q. When did you learn that Steadman had left the country?

A. I heard it the next morning.

Q. Now, then, you heard some guns fire; in what direction did you hear these guns?

A. It was sorter towards where the man was found; up towards where the body was found—the bones.

Q. Did they appear to be upon the road or from it?

A. Appeared to be a little piece from the road.

Q. In what direction, in the field, or in the woods?

A. In the woods, outside of the field.

Q. About how far would you think that these guns were fired from your house; do you know where the body was found?

A. I heard them speak about where the body was found; I was along the road and heard them speak about it.

Q. It was where you understand the body was found, where you heard the guns fire, about five minutes after these men passed you?

A. Yes, sir.

Col. CRAVENS. She didn't say that.

Col. CLAYTON. I understand you to say this, when I asked you where the guns were fired, you said it was about where the body was found?

A. Yes, sir; up there in that direction where the body was found.

Q. I asked you about how far from where you was living?

A. I could not tell you that?

Q. You didn't see any more of them?

A. No, sir.

Q. The next morning you learned that Steadman was missing?

35 A. Yes, sir.

Q. Did you hear anything about Mrs. House?

A. I heard them say she was also missing the next day.

Q. And that was the morning after you saw these two men pass and heard the guns fired?

A. Yes, sir.

Q. You think it was about half an hour by sun; late in the evening?

A. Yes, sir.

Q. Did you hear them talking as they passed by your place?

A. Yes, sir.

Q. Did you hear what they said?

A. No, sir.

Q. How long had it been since you seen Steadman before that?

A. I had seen him that morning.

Q. Which way was he going then?

A. Going east.

Q. In the opposite direction?

A. Yes, sir.

Q. Up towards the prairie?

A. Yes, sir.
Q. There is a prairie east of you?
A. Yes, sir.
Col. CLAYTON. You can have the witness.

Cross-examination:

Col. CRAVENS. How long had you been living at that place, Mrs. James?
A. I had been living there two or three weeks, I reckon.
Q. Where had you lived before that?
A. On Lipscomb's farm?
Q. How long had you lived there?
A. I could not tell you.
Q. About how long?
A. About eight or nine months.
Q. Where did you live before you lived up there?
A. Down in the Cherokee Nation.
36 Q. What part?
A. Near Webber's Falls.
Q. How long did you live there?
A. About three months?
Q. Where did you live before you lived at Webber's Falls?
A. We lived up on Drudy.
Q. How long did you live there?
A. Two years.
Q. Are you an Indian?
A. Yes, sir; I am a little Injun in me—a little Injun, not much?
Q. Born in the nation?
A. Yes, sir.
Q. Where?
A. Close to Talequah.
Q. What was your name?
A. Ogle was my father's name.
Q. Husband an Indian?
A. Yes, sir; part Injun.
Q. Born in the nation?
A. I could not tell you, for I don't know.
Q. How long did you live there after this man was missing?
A. I left there the next morning and went up to his father's. We moved up in the house with his father's. We was camped in a tent and moved up in a house with his father's.
Q. Whose father?
A. My husband's.
Q. Where was that?
A. On the Lipscomb farm.
Q. Moved back to the same place where you came from?
A. Yes, sir.
Q. How long did you stay there?
A. Three or four months.
Q. And then where did you go to?
A. Down close to Muskogee on Mr. Spear's farm?
Q. Do you live there now?

A. Yes, sir.
Q. Did you make a trip to Missouri after this?
A. No, sir.
Q. Did your husband?
A. No, sir.
37 Q. You lived in the tent; who lived in the house?
A. Mr. Underwood.
Q. What relation is he to you?
A. He was my husband's brother-in-law.
Col. CLAYTON. They lived in the house, and you in the tent?
A. Yes, sir.
Col. CRAVENS. Did Underwood marry your husband's sister?
A. Yes, sir.
Q. How long has Underwood lived there?
A. I could not tell you.
Q. I mean after this; did he move away when you did?
A. No, sir; they staid there two or three weeks.
Q. Where did they go?
A. To Missouri.
Q. Is Underwood here now?
A. No, sir.
Q. They went to Missouri?
A. Yes, sir.
Q. Who composed Underwood's family at that time?
A. Underwood and his wife.
Q. And all of them were there?
A. Underwood was gone.
Q. Underwood and his wife composed the family?
A. Yes, sir.
Q. Where were you when you saw these gentlemen pass?
A. I was sitting out in the yard.
Q. Whereabouts?
A. Right out in front of my tent, at that Rabbit House. We was camped there in the yard.
Q. Sitting out in front of your tent; against your tent?
A. No, sir; a little piece from the tent.
Q. How far?
A. I could not tell you.
Q. What were you doing?
A. Me and his two sisters were settin' out there, talking.
38 Q. Where are his two sisters?
A. One of them is about a mile from town out here, and the other one is in Missouri.
Q. That was Underwood's sisters, or James?
A. My husband's sisters; one of them was Underwood's wife.
Q. Anybody in the tent?
A. No, sir.
Q. Was that in the evening?
A. Yes, sir.
Q. Where were you when they passed in the morning?
A. I was setting in my tent door?

Q. You are sure of that?
A. Yes, sir.
Q. You were sitting down on the ground or on a chair?
A. On a chair.
Q. How far were you from the fence?
A. I was about 100 or 150 yards from the fence.
Q. Now, about how far were you from the tent?
A. I could not tell you that.
Q. As near as you can guess at it?
A. Yes, sir.
Q. You see that house behind you?
A. Yes, sir.
Q. As far as that?
A. No, sir.
Q. About how far?
A. About as far as from me to you.
Q. From the tent?
A. Yes, sir (8 or 10 feet).
Q. And about 150 yards from the road fence?
A. Yes, sir.
Q. There is a gate down there, Mrs. James, going out to the road below there?
A. Yes, sir.
Q. How far is it down to the gate going west?
A. About 150 or 200 yards.
Q. That was the only place of getting out?
A. Yes, sir.
Q. And the space that led out through the woods led down to
39 the gate?
A. Yes, sir.
Q. The weeds had grown up high along there by the fence, where the fence had been cut out.
A. No, sir; they wasn't when I was there.
Q. When was it you was there; 21st of October?
A. That was after they had been cleaned out.
Q. You were living there the 21st of October?
A. Yes, sir.
Q. When this man was missing. Don't you know the weeds were growing high all along the fence then?
A. No, sir; they wasn't, for the fence had been cleaned out; the fence row was cleaned out; it wasn't very long before until it was cleaned out.
Q. What was it done for?
A. I can't tell you; I know my husband helped to clean it out.
Q. That was the wagon road?
A. Yes, sir.
Q. There was a fence row cut next to the fence, inside and out.
A. Yes, sir.
Q. Weren't there weeds growing between the fence and the wagon way?
A. There was little low weeds out straight to the fence.
Q. They had not been cut?

A. No, sir.
Q. They were standing just like they grew in the summer?
A. Yes, sir.
Q. From the house, out to where the wagon way was cut?
A. Yes, sir.
Q. That would be 100 yards?
A. Yes, sir.
Q. How wide was the wagon road cut?
A. 30 feet, I believe it was; 30 feet from the fence to the field,
40 and the road was 30 feet wide.
Q. Was it cleaned out before you went there, or after?
A. After.
Q. Who did it?
A. My husband and Mr. Guffy.
Q. What did your husband do?
A. He was helping clean out the fence row.
Q. Where did he clean it out?
A. Along where we was living.
Q. What did he clean it out with?
A. An ax, and some other tool.
Q. You were pretty well acquainted with Steadman?
A. Yes, sir.
Q. How many times did you ever converse with him?
A. Two or three times.
Q. When you saw him, he was always with Alexander?
A. Yes, sir.
Q. They were always together?
A. Yes, sir.
Q. Where did you converse with him?
A. There close to my house, and up to his folks.
Col. CLAYTON. Whose folks?
A. My husband's.
Col. CRAVENS: Where was that at?
A. On the Lipscomb's farm.
Q. Weren't you sick at this time?
A. Yes, sir.
Q. Weren't you confined to your bed?
A. No, sir.
Q. Hadn't you been confined then?
A. No, sir.
Q. What was the matter with you?
A. It was just before my baby was born.
Q. That baby [in witness's lap].
A. Yes, sir.
Q. How long was this before your baby was born?
A. He was missing on Monday, and my baby was born on Thursday night.
Q. What day of the month?
A. On the 24th of October.
41 Q. Where was it born?
A. At his father's house; my husband's father's.

Q. How many times had you seen—you had seen them pass frequently?
A. Yes, sir.
Q. Riding up and down the road?
A. Yes, sir.
Q. How many times before that had you seen them pass?
A. I could not tell you; they had passed there several times going both ways.
Q. What kind of horses did they ride?
A. I never seed them ride any other kind of horses, only the same horses they were riding that evening.
Q. Steadman was riding a bald-faced and Alexander a bay?
A. Yes, sir; that is all the kind they rode.
Q. You had seen them pass there, going both ways?
A. Yes, sir.
Q. What day of the month did you see them pass there the first time?
A. I could not tell you.
Q. What day of the week?
A. I can not tell you that; yes, I can, because it was on Sunday.
Q. You had seen them pass there several times; what day was the second time?
A. I could not tell you.
Q. Did you see them going both ways on this Sunday?
A. Yes, sir.
Q. What Sunday was that?
A. I could not tell you.
Q. How long before this time, the day that Steadman is said to have disappeared?
A. About a week and a half, I guess, or two weeks.
Q. That was the first time you ever saw them?
A. Yes, sir.
42 Q Did you have any conversation with them?
A. Yes, sir; they stopped and was talking to me and my husband.
Q. Where were you?
A. We were at the door of our tent, and they were at the fence.
Q. The next time they passed, was your husband at home?
A. No, sir; I don't believe he was; I don't remember.
Q. You don't remember whether he was there the second time or not?
A. No, sir.
Q. You don't remember what day of the week it was you saw them next?
A. No, sir.
Q. You saw them first on Sunday, and that was about a week and a half before you saw them this last time?
A. Yes, sir.
Q. How many times between the first and last time did they pass?
A. I don't remember.
Q. As many as three times?
A. I don't know; I think so.
Q. You are certain they passed as many as three times?
A. Yes, sir.

Q. This last time was on Monday, and you are certain you had seen them pass before that as much as three times?

A. Yes, sir; I think it was.

Q. When you would see them pass, would they pass both ways?

A. Yes, sir.

Q. You had seen them pass as many as three times before this Monday?

A. Yes, sir.

Q. What time of day would they generally pass; up in the morning going east, and back in the evening, going west?

A. Yes, sir.

43 Q. You saw them pass east and west three time, and then, and then with the last time, that would make four trips, counting all the time you had seen them; up and back, each way, four times?

A. Yes, sir.

Q. That would make eight trips they had passed there, altogether.

A. Yes, sir.

Q. Did Steadman ever get down and come into your tent?

A. No, sir.

Q. Who else was there this last time they passed, at the time they passed?

A. My husband's two sisters and me.

Q. Your husband's name is James; what are his sister's names?

A. One of them is Tennessee and the other one Ella.

Col. CLAYTON. Which one of them lives out here?

A. Tennessee lives next to town.

Col. CRAVENS: Was she a married woman?

A. No, sir; not at that time; she is now.

Q. Who did she marry?

A. Guffy.

Col. MELLETTE. It was Tennessee Underwood, then?

A. No, sir; Tennessee James.

Col. CRAVENS. What sort of a looking man was Mr. Steadman?

A. He favored his brother.

Col. CLAYTON. You mean this gentleman here?

Q. Yes, sir.

Col. CRAVENS. Did he have a mustache like his brother?

A. I think so.

Q. Black mustache?

A. I think so.

Q. Did his mustache look like his brother's?

A. Something.

Q. Was it the same kind of a mustache?

44 A. No, sir; he didn't have as large a mustache as his brother.

Q. What color was it?

A. It was dark, but not so large as his brother's.

Q. What was the color of his hair?

A. He had dark hair.

Q. Did he have any whiskers, except a mustache?

A. No, sir.

Q. You can't tell me how he was dressed?

A. No, sir.

Q. What kind of a hat did he have on?
A. I could not tell you, because when he passed I don't remember.
Q. What kind of a hat did he have the other times?
A. He had a white hat.
Q. Can't tell what kind he had on this day?
A. No, sir; I never noticed him much; he just passed along the road.
Q. How long had they been gone east before they came back that evening?
A. I could not tell you.
Q. Did they speak to you when they passed?
A. No, sir.
Q. Did you speak to them?
A. No, sir.
Q. They just rode along the road.
A. Yes, sir.
Q. That was the fourth trip you had seen them make up and down the road?
A. Yes, sir.
Q. Can you tell what day they had made any other trip?
A. No, sir; I can tell you the day of the week they passed the first time; they passed on Sunday.
Q. You can't tell the day of the month?
A. No, sir.
Q. You can't tell the day of the week that they made any other trip?
A. No, sir.
Q. How many of these trips when they passed up there was your husband at home?
A. I could not tell you that.
Q. Didn't you keep up with him—your husband?
A. No, sir; I don't remember how many times.
Col. CLAYTON. She did better than your wife does with you, if she did.
Col. CRAVENS. What kind of a day was it that they passed there the first time?
A. It was a clear day.
Q. How was it the last time?
A. It was a clear day.
Q. The other days, were they all clear days.
A. Yes, sir.
Q. Every time they passed, it was a clear day?
A. Yes, sir.
Q. Where had your husband been, Mrs. James, on that day?
A. He had been down on the slough——
Q. But you can't recall where he was any other day?
A. I can't say whether he was at home or not?
Q. But you recall this day. How is it you can recollect he had gone duck-hunting on this day, but you can't recollect whether he was at home, or where he was any other days?
A. I know he was gone, but I can't tell where he was the other days.
Q. The first day he was at home?
A. Yes, sir. That is where he was at the first time they passed.

Q. He was at home when they passed in the morning, and evening.
A. Yes, sir.
Q. What was he doing?
A. Nothing, only setting around in the tent.
Q. How long had he been duck-hunting this last time when they passed?
A. Only a few minutes.
Q. Which way did he go?
A. He went out and crossed the fence.
46 Q. Where?
A. Right near the house.
Q. How did he cross the fence?
A. He climbed over the wire.
Q. With a gun? Did you ever see him climb over a wire fence with a gun?
A. Yes, sir.
Q. Isn't that a high wire fence?
A. Yes, sir.
Q. There is no block or stump of a tree there?
A. No, sir; but I have seen him climb the wire fence many a time.
Q. Did you see him climb the wire fence when he came back?
A. Yes, sir.
Q. How long after they passed?
A. I couldn't tell you, but it wasn't long.
Q. And he came back and got over the fence at the same place where he had gone out at?
A. Yes, sir.
Q. You were still sitting there?
A. Yes, sir.
Q. And he got over the wire fence right at the same place where he had gone out?
A. Yes, sir.
Q. How long after the shooting was it that he came back?
A. It wasn't—there was about three shots fired after he came there.
Q. You say there were eight or nine shots?
A. Yes, sir.
Q. How many were there?
A. Eight or nine, as well as I can recollect.
Q. How many do you mean?
A. I counted eight, I believe.
Q. How many do you think you didn't count?
A. I don't know?
Q. You didn't count them all; did you count about half of them.
A. I counted more than half of them.
47 Q. About how much more?
A. I couldn't tell you that.
Q. Do you think you counted three-fourths of them?
A. I don't know whether I did or not.
Q. You didn't count them all; which ones didn't you count, the last ones or the first ones?
A. The last ones.

Q. You just counted them until you got tired and quit?
A. Yes, sir.
Q. Your husband wasn't in sight when the first gun was fired?
A. No, sir.
Q. How many times had they shot before he came to the fence?
A. 7 or 8 times, I guess; maybe not so many.
Q. How many times did they shoot after he got over the fence?
A. I could not tell you.
Q. You said you thought they shot two or three?
A. I could not tell you exactly how many.
Q. Then you and Mrs. Underwood and Tennessee were sitting there?
A. Yes, sir.
Q. And he was standing there?
A. Yes, sir.
Q. Your husband just climbed over on the wire; there was no stile-place or stump there?
A. No, sir.
Q. You saw him get over when he came in and when he went out?
A. Yes, sir.
Q. You are certain of that?
A. Yes, sir.
Q. And he came to the tent while the shooting was going on?
A. Yes, sir.
Q. Some of the shooting took place before he got there, and some after he got to the fence?
A. Yes, sir.
48 Q. You didn't count the shots?
A. No, sir.
Q. You didn't pay much attention to the shooting, did you?
A. No, sir.
Q. There was nothing said about it at the time; it didn't attract much attention, did it?
A. No, sir.
Q. At the tent?
A. No, sir; only we said: "There is somebody killed a deer or some squirrel."
Q. Did you say that or think it?
A. We was talking to one another about.
Q. You and Mrs. Underwood?
A. We talked about it.
Q. Among yourselves?
A. Yes, sir.
Q. Now, had you seen anybody hunting that day?
A. Yes, sir; there had been several Injuns passed by there that day; there was deer driving along there; always deer driving along there.
Q. I will ask you if that wasn't a considerable range for the deer along there in that field, in that enclosure?
A. Yes, sir; that is what they said; a good many deer staid in there.
Q. How long was it, Mrs. James, after they passed along there until your husband came up?
A. I could not tell you.

Q. As much as half an hour?

A. Yes, sir; I expect it was.

Q. Had anybody else passed along there, going either way after defendant did, before your husband came?

A. No, sir.

Q. It was about half an hour after they passed before your husband came up?

A. Yes, sir.

Q. And when your husband came up the shooting was going on?

A. Yes, sir.

49 Q. You are confident it was half an hour after they passed before your husband came up?

A. I think it was about that time.

Q. How long a time did the shooting last, Mrs. James?

A. I could not tell you.

Q. It was pretty quick?

A. It didn't last so powerful long.

Q. I suppose it lasted about as long as two men could fire?

A. Yes, sir.

Q. Pistols or guns?

A. It appeared like shotguns.

Q. This man didn't have any pistol in his hand?

A. They didn't.

Q. Now, your husband came up; about how far—how long had he been gone when these men passed?

A. He hadn't been gone but a few minutes.

Q. About how many?

A. I couldn't tell you.

Q. He had gotten out of sight when they rode past?

A. Yes, sir; I saw him when he got over the fence; he went down on the inside of the fence and went out, and down the road, and went down by a little house down there, and went on a little, and then turned up down a slough——

Q. You can't say that; that is what he told you he did?

A. Yes, sir.

Q. But you mustn't swear to what he said. He started off east, alongside of the fence?

A. No, sir; he had got alongside of the fence; he was sorter northeast, in the road.

Q. Right in the road?

A. Yes, sir.

Q. I would like for you to tell me how long he had been gone before you saw Steadman and Mr. Alexander pass?

A. Well, I could not tell you.

50 Q. Did you hear him shoot any?

A. No, sir; I didn't.

Q. He wasn't gone far enough to shoot?

A. No, sir.

Q. He had just left?

A. Yes, sir; he had just gone out of sight.

Col. BARNES. We are not entitled to it, but since you have said what your husband told you, you say he went to the slough, and went back down it?

A. Yes, sir; he said he went to it.

Col. CRAVENS. How far is the slough from the house?

A. It was about three or four hundred yards from the house.

Q. When these men passed your house, were they talking?

A. Yes, sir.

Q. They seemed to be friendly?

A. Yes, sir.

Q. Didn't they always seem to be friendly?

A. Yes, sir.

Q. You had never seen them except when you saw them together?

A. No, sir; I hadn't.

Q. And the shots that you heard appeared to be close together?

A. Yes, sir.

Q. One right after the other?

A. Yes, sir.

Q. You stated, I believe, that you had lived there two or three weeks at that time?

A. Yes, sir; as well as I can remember.

Q. Had come from the Cherokee Nation there?

A. We came from the Cherokee Nation up there in the Choska Bottom.

Q. How long had you lived up there in the Choska Bottom?

A. We had lived there about a year; may be longer; I could not tell you exactly how long.

Q. Mrs. James, you had lived there, how long did you say?

A. About a year, I reckon; may be lived there longer, and may be not quite so long; I can't tell you how long we had been there.

Q. You lived up on Lipscomb's farm?

A. Yes, sir.

51 Q. Had you ever had any conversation with Mr. Steadman at all?

A. Yes, sir; I had talked with him and Alexander both.

Q. What time was it? Where?

A. Around there.

Q. They were trying to sell horses?

A. Yes, sir.

Q. Both of them trying to sell horses?

A. Yes, sir.

Q. Claimed to be partners?

A. Yes, sir.

Q. Did you hear them both say that?

A. Yes, sir; I heard them both say they had horses to sell.

Q. They were together?

A. Yes, sir.

Q. When they both claimed they owned the horses?

A. Yes, sir.

Q. When did you first see them?

A. It was on Sunday the first time I seen them.

Q. Where was that?

A. Down there at my house; they was out there; rode up to the fence, and me and my husband was standing in the yard, and they talked about the horses.

Q. They was riding the same two horses?

A. Yes, sir.

Q. Did you ever see their bunch of horses?

A. No, sir.

Q. They both spoke about their having horses?

A. Yes, sir.

Q. Did they try to sell any to your husband?

A. No, sir.

Q. They were inquiring about where they could sell their horses?

A. Yes, sir.

Q. I want to find out how far the tent was from the house.

A. It was a good little ways from the house.

Q. What direction from the house?

A. It was east.

Q. Didn't it stand a little further back from the road than the house?

A. No, sir; it was a little the road than the house was.

52 Col. CLAYTON. It was east of the house, but a little nearer the road?

A. Yes, sir.

Col. CRAVENS. That was about 100 yards from the road?

A. Yes, sir; 100 or 150.

Q. Right opposite that house, at the nearest place, the road was about 100 or 150 yards from the house?

A. Yes, sir; about that far.

Q. Now, when your husband came back it was very late, and he stayed at home?

A. Yes, sir; he didn't go off after that any more.

Q. You are certain of that?

A. Yes, sir.

Q. He didn't go off with his gun?

A. No, sir; not after he came back.

Q. Didn't he leave the tent at all?

A. He didn't leave the place, only just went after a bucket of water.

Q. Where was that?

A. Down to the slough.

Q. Which way was that?

A. It was east.

Q. Now, you say it was a very common thing to hear shooting around there?

A. Yes, sir.

Q. All over the timber?

A. Yes, sir.

Q. It was a very common thing to hear people hunting—shooting?

A. Yes, sir.

Q. You never paid any attention to it?

A. No, sir.

Q. You never told anybody about what you heard?

A. No, sir.

Q. Never thought it would amount to anything?
A. No, sir.
Q. And never told anybody about it?
A. No, sir.

53 Q. What did you say to your husband when he came up; what did your husband do?

A. He says to me: "I believe I will go up where the men are shooting and see what they are shooting at;" and I says: "No, you will have to go after a bucket of water," and he put up his gun and went after a bucket of water.

Q. He didn't ask you who it was shooting.
A. No, sir.
Q. You didn't tell him about Steadman and Alexander passing?
A. No, sir.
Q. Did you know their names?
A. Yes, sir.
Q. You didn't tell him they had passed?
A. No, sir.
Q. You didn't say a word about it?
A. No, sir.

Q. He said he believed he would go and see who that was shooting, and see if they was killing squirrels, and you told him no, he had to go after a bucket of water, and he took the bucket, and went after a bucket of water, and went in the opposite direction. Did he have to go out of the field to get to the slough?

A. Yes, sir; he went down below, and went after water on the east side of the field.

Q. When he came in, he came right over the fence, but when he went out, with the bucket, he went out, and went over on the east side?
A. Yes, sir.
Q. You are certain of that are you?
A. Yes, sir.
Q. You were still sitting in the chair, were you?
A. Yes, sir.
Q. And saw him go off?
A. Yes, sir.

Q. How long was he gone after the water?

54 A. He wasn't gone but a few minutes.

Q. There was no shooting while he was gone?
A. No, sir.
Q. The shooting was all over before he started?
A. Yes, sir.
Q. You were still sitting there at the tent?
A. Yes, sir.
Q. How far did he have to go out east to the slough, to get the water?
A. I could not tell you exactly how far.
Q. It was a good deal further to the slough than it was out straight from the house to the fence.
A. Yes, sir; it was a right smart further.
Q. You never told anybody about hearing the shooting?
A. No, sir.

Q. You didn't think it would amount to anything?
A. No, sir; I didn't.
Q. Where were you when the remains were found? You were staying at his father's, down on the Lipscomb farm?
A. Yes, sir.
Q. What part of the Lipscomb farm?
A. The east half.
Q. Did you live on the east side of the field or the west side?
A. East side.
Q. How far from where you lived to the Rabbit House?
A. I could not tell you exactly how far it was.
Q. Do you know how far they called it?
A. No, sir.
Q. You never went back there after the body was found?
A. No, sir; I never went back to the Rabbit House.
Q. How long after you moved away did they find the remains?
A. We moved away the next day, and I haven't been back there since.
55 Q. You never told anybody about hearing the shots?
A. No, sir.
Q. It was all shotguns?
A. Yes, sir; they sounded like they was.
Q. You never saw them have a pistol?
A. No, sir.
Q. I believe you stated you saw them once or twice at your father-in-law's?
A. Yes, sir.
Q. Did they have any pistol then?
A. No, sir.
Q. When did you see them?
A. It was before—I had seen them pass my tent once, and then I saw them at my father's.
Q. How far was it to the next house from where you lived, down on the road towards Choska?
A. I couldn't tell you.
Q. How many houses were there in the field?
A. I couldn't tell you.
Q. I mean right along the road, between your house and Choska Store?
A. There wasn't any.
Q. There wasn't any land in cultivation along out where you lived?
A. No, sir; it was a good ways down to where there was.
Col. CLAYTON. Mrs. James, this shooting that you are speaking of just now, occurred the evening before you learned these parties were missing——
Col. CRAVENS. When did you say you learned Steadman was missing?
A. The next day.
Q. When did you learn that?
A. After we moved up to my father-in-law's.
Q. Who told you that?
A. His mother.
Q. Mr. James' mother told you what?
56 A. About Mrs. House and this man being missing.

Q. That is the first you heard of it?
A. Yes, sir.
Q. The first you heard of it was that they were hunting Mrs. House and Steadman?
A. Yes, sir.
Q. Had you seen them?
A. No, sir.
Q. But your mother-in-law told you they were out hunting for Mrs. House and Steadman?
A. Yes, sir.
Q. And they thought they had run off together?
A. Yes, sir; that is what everybody thought around there.
Q. Are you sure that it was the next day afterwards that you moved?
A. Yes, sir; it was the next day after I seen them pass.
Q. Might it not have been a day or two?
A. It was the next day.
Q. It wasn't the day after you moved?
A. No, sir; it was the day we moved.

Redirect examination.

Col. CLAYTON. Mrs. James, when your husband's mother told you that this gentleman was missing, and the woman was missing, did you tell her about seeing them the evening before?
A. Yes, sir.
Q. You did tell it, then.
A. I just told them I had seen them pass there.
Q. You have told about it since then. Col. Cravens asked if you had told it since then. You did tell your mother about it?
A. Yes, sir; I told them about seeing them pass.
Q. You told me about the shooting?
A. I don't remember whether I did or not.

Col. CRAVENS. Never mind what she told you.

57 Q. Now, Mrs. James, your husband went hunting that evening?
A. Yes, sir.
Q. When he went away the second time, he went for water?
A. Yes, sir.
Q. Took the bucket to go after water to the slough?
A. Yes, sir.
Q. The slough is about 400 yards from your house?
A. Yes, sir; I think it is about that distance.
Q. It lies east of your house?
A. Yes, sir.
Q. The next morning you moved back to your husband's mother's?
A. Yes, sir.
Q. How far was that?
A. I could not tell you.
Q. How far from the store?
A. It was a mile, or a mile and a half.
Q. In what direction from the store?
A. It was sorter northeast.
Q. It can't be over two miles—two or three miles from where you had been living?

A. No, sir; I could not tell you just exactly how far it was.
Q. Did they have their coats on that evening?
A. No, sir.
Q. They didn't?
A. No, sir; they had their coats off. I did't see their coats, but they didn't have their coats on.
Q. In their shirt sleeves?
A. Yes, sir.
Q. Pleasant day, or cold day?
A. Pleasant day.

58 B. J. JAMES.

Col. CLAYTON. Please state your name?
A. B. J. James.
Q. B. J.?
A. Yes, sir.
Q. Benjamin, do you know this defendant?
A. Yes, sir.
Q. Did you know Steadman in his lifetime?
A. I had seen him a few times.
Q. Do you remember the day he was missing from your country?
A. Yes, sir.
Q. What day was that?
A. That was the 21st of October.
Q. What day of the week, do you remember
A. Monday.
Q. Where were you on the evening of that day?
A. Well, I had started hunting.
Q. Please state if you saw defendant and Steadman, and if so, where?
A. I had started hunting, and had got down a little ways——
Q. What direction?
A. Kind of east.
Q. This lady that was upon the stand, Mrs. Stella James, is your wife?
A. Yes, sir.
Q. Where were you staying at that time?
A. On Meagher's farm down there by what is called the Rabbit House.
Q. In a tent?
A. Yes, sir.
Col. CRAVENS. He didn't say anything about a tent.
Col. CLAYTON. In a tent?
A. Yes, sir.

59 Col. CRAVENS. I object to your leading the witness; we want fair play.

Col. CLAYTON. It is a terrible thing to lead a man from a tent. (To witness.) You lived in a tent?
A. Yes, sir.
Q. Right at the back of the Rabbit House?
A. Yes, sir; what is called the Rabbit House.
Q. You said you had started hunting. What did you start hunting for?

A. I had started to see if I could find some ducks.
Q. Where from?
A. From the tent.
Q. You went, you say, east?
A. Kind of a northeast course; it wasn't exactly east.
Q. The road takes a turn to the north?
A. Yes, sir.
Q. The east and west road?
A. Yes, sir.
Q. How far from your tent had you gotten when you met them?
A. Well, it was 100 yards or more; it might have been 150.
Q. Were they riding or walking?
A. Riding.
Q. Did they have anything with them?
A. One duck.
Q. Any guns?
A. Couple of guns.
Q. Each have a gun?
A. Yes, sir.
Q. Please state what kind of horses they were riding.
A. Steadman was riding a bay, bald faced, and I took the horse Alexander was riding to be a bay, too; but I never noticed the horses particularly; I noticed the one Steadman was riding because I had seen it before.
Q. The bald-faced horse?
A. Yes, sir.
Q. Go on and state what occurred after that.
60 A. I went on—when I met them I stopped and talked with them about ten minutes.
Q. What did you talk about?
A. I asked them about the ducks; when we stopped and commenced talking I was asking them about the ducks, and I said to Mr. Steadman that I seen they had killed one of my ducks, and he said "Yes;" and we stood there, talking about one thing and another, and Mr. Steadman said they had to go on over to their camp, as it was getting late, and tend to the stock; he said they had to round them up, and I told them I believed I would go on and see if I could find some ducks, and I went on about 50 or 75 yards, and I said to myself, it was getting so late, and they have just rousted the ducks out, there won't be any there, and I started back and went a few steps, and went down to where we was getting water to see if there was any there, and there wasn't any ducks there and I started back to the tent, and about the time I was crossing the fence, or got over, somewheres about that time I heard shooting commence, and I walked about 25 or 30 steps—yards—and I raised my head and seen their horses standing in the road; the one Alexander was riding looked to be he was standing loose in the road, the way they was going, and the horse Steadman was riding seemed to be that he might be hitched; his head was turned towards the fence.
Q. Those two horses were in the road?
A. Yes, sir.
Q. Nobody on them?

A. No, sir.

Q. How far from your house was it?

A. 150 or 200 yards.

Q. You saw those two horses in the road, 150 or 200 yards from the house, out west; that is, towards the store?

A. Yes, sir.

61 Q. Those two horses were standing in the road when you saw them; was the shooting stopped or was it still going on?

A. It was still going on.

Q. These horses were standing in the road; where was the shooting?

A. Out to the right of the road; it seemed to me to be a little forward of where the horses were standing in the road.

Q. You mean to the right of the road as you face the west?

A. Yes, sir.

Col. BARNES. That is leading.

Col. CLAYTON. Well, I will ask you again whether it was in the field or outside the field?

A. It was outside of the field.

Q. That was up north of the road?

A. Yes, sir.

Q. The shooting was out there. Could you form any idea how far from the fence?

A. I could not tell, but it seemed to me to be about 40 or 50 yards.

Q. Where from, the north of the field?

A. From the road.

Col. CLAYTON. I will get you to state the distance from your tent.

A. 150 or 200 yards.

Q. To where they were standing?

A. Yes, sir.

Q. What did you do after that?

A. Well, I asked my old lady how near the water was out, and she said it was about out. I was fixing to go out where they was at, and I laid my gun on the bed and picked up the bucket, and went after water, and I never noticed anything about the shooting nor about the horses.

62 Q. When did you learn that Steadman was missing?

A. It was the next morning.

Q. How many shots do you think were fired?

A. Well, there was as many as eight, I think; there was somewhere about eight; there mightn't been quite so many, and may be a few more.

Q. You didn't count them?

A. No, sir.

Q. How were they fired?

A. Well, the first along they wasn't fired so powerful quick; and they was fired pretty tolerable quick, too, until it got to the two last, and they seemed to be a larger gun than the others, and they fired about as quick—well, as quick as you could pull the trigger if both hammers were back; you couldn't hardly tell the distinction between them.

Q. About what time was it?

Col. CRAVENS. The last two, you think, was a different kind of a gun?

A. Yes, sir; it seemed as if it was a larger gun.

The COURT. A larger gun or a louder report?

A. A louder report.

The COURT. It might have been the same gun with a larger charge?

A. Yes, sir; it might have been.

Col. CLAYTON. It just seemed as if they went "bang-bang," but you could distinguish there was two?

A. Yes, sir.

Q. You say it was the one Steadman was riding, that the horse seemed to be tied to the fence?

A. Yes, sir; he seemed to have his bridle thrown over the fence.

Q. Do you know where the body was found?

A. Yes, sir.

63 Q. Ever up to it?

A. Yes, sir; after the body was done put away.

Q. Where was the body buried?

A. Right there on the ground.

Q. Did these two horses or either of them have bridles?

A. Yes, sir.

Q. Did you see Steadman any more after that?

A. No, sir.

Q. Did you see the defendant?

A. Yes, sir; the next morning.

Q. Where.

A. Down at Lipscomb's store.

Q. Did he say anything about it?

A. Him and Perry was talking when I went in, and I heard them mention something about Steadman being gone.

Col. CRAVENS. Who was that talking?

A. Alexander and Perry; they was talking, and I walked up to where they was, and I asked him if his partner was gone and he said "Yes," and he said he had went off once before, and he was gone nine days, and he had never seen nor heard tell of him until he come in; and that he had been hunting for him, and he wasn't going to hunt any more until he heard something from him.

Col. CLAYTON. Did you ever see anything more of the bald-faced horse?

A. I seen him—I believe it was after the body was found—riding the horse; he come to Lipscomb's store one day——

Q. Who did?

A. Alexander; riding the bald-faced horse.

Cross-examination:

Col. CRAVENS. You were living at what was called the Rabbit House; in a tent, right behind the Rabbit House. Which way from the Rabbit House?

A. It was east.

64 Q. Right at the east end of the house; back of it, at the east end of the house?

A. Yes, sir.

Q. If I understood you, you went out hunting—started out hunting—and went out on the road some distance, 100 yards or so, and met these

parties and talked with them 5 or 10 minutes, and then turned and went down the slough?

A. Yes, sir; I went on and then came back, and came a little past where I had stopped in the road and come to the slough, and then went down the slough.

Q. (Showing witness map.) Now, here is the house and here is the road that runs up there.

A. This little house that stands out there is not there, but it should be along there somewheres, and I met them beyond that little house, right down there towards the slough, about 100 yards.

Q. You then came down the slough, did you not, to where you got water?

A. Yes, sir.

Q. You had a place for getting over the fence—a stump?

A. Yes, sir; on the inside and out; the fence runs across there like, and we always had a stump there, and we always got over that?

Q. That is east of the house?

A. Yes, sir.

Q. You came across here to your house?

A. Yes, sir; and after I got along here I raised my head, and I saw the horses that was standing hitched up there.

Q. You got over the steps?

A. Yes, sir.

Q. That is on the east side of the house?

A. Yes, sir.

Q. That is along the east string of the fence?

65 A. Yes, sir; there is thick undergrowth along there; it had grown up until it was higher than a man's face.

Q. There is a gate up there, past the house?

A. Yes, sir; but there was a steeple knocked out of the wire where I always got through.

Q. But you didn't come back that way?

A. No, sir; I went down this way.

Q. I understood you to state to the prosecuting attorney that after you got over the fence on the inside you went about 15 or 20, or 25 or 30, whatever it was——

A. After I got through the fence I went about 25 or 30 steps, and looked up and saw the horses.

Q. Was it as far as 25 or 30 steps?

A. I think so.

Q. Did you measure it?

A. No; that is what I taken it to be.

Col. BARNES. I want you to locate that stump.

Col. CRAVENS. He says it is down on the bank of the slough.

Col. BARNES. I want him to indicate it.

Col. CRAVENS. He wants you to make a mark where that stump was, where you got over at. [Witness does so.]

A. It is right on the bank of the slough, about 30 or 40 yards south from the northeast corner of the field.

Q. It is in sight of the house?

A. Yes, sir; it is pretty near forninst the house.

Q. It is pretty near right out east of the house?

A. Yes, sir.

Q. You came right across to the house?

66 A. No; I come across to the fence; the fence row had been cut out.

Q. You came over the fence where there was timber?

A. Yes, sir.

Col. BARNES. Don't you know that the timber is cut out down there?

A. The fence row is cut out 15 feet from center to center. It is 30 feet wide from one outside of the fence row to the other; it is 15 feet from the center to each side; when they got to the corner they didn't cut it out square with the corner.

Q. It is cut out in the corner?

A. Yes, sir.

Q. There is a little set off there, and the path where you carry water runs off east to the fence?

A. Yes, sir.

Col. CRAVENS. How far is it from the corner of the house—you got over right in front of the house?

A. I got over right forninst the corner of the house.

Q. How far is it from the corner of the house to the corner of the field?

A. About 75 or 80 yards to the corner of the field.

Q. You never measured it?

A. No, sir.

Q. How far from the corner of the fence to where you got over the wire?

A. It is somewhere about 30 or 40 yards.

Q. The same estimate you made on the other?

A. Yes, sir.

Q. How is the ground, Mr. James, along the north side of the field?

A. Well, it is in little low places, and some places are a little higher; there is no place high enough to hide a person, along from one end to the other.

Q. That is, the weeds?

A. No, the ground.

Q. When you saw the horse, according to your estimate, you were about 50 or 60 yards east of the house?

A. Yes, sir—no, I was a little further than that; I wasn't more

67 than 15 or 20 feet from the corner of the road.

Q. The corner was about 75 or 80 yards northeast of the house; east of the house, but not due east; you say it is about 75 or 80 yards from the house to the east fence, and you were right at the fence.

A. Yes, sir.

Q. How had you gone up from where you got over?

A. Up towards that fence.

Q. You were still at the corner?

A. I wasn't exactly that.

Q. How far from the east fence.

A. I said about 15 or 20 feet from the east fence.

Q. How far from the north fence?

A. I was walking along the north fence.

Q. Did you say 15 or 20 yards, or feet?
A. Yards, I should have said.
Q. And it is 80—75 or 80—yards from the house to the east fence?
A. Yes, sir.
Q. You were 60 or 70 yards east of the house, then?
A. Yes, sir; and I was walking right by the side of the north fence.
Q. The path run right along the side of the north fence, as you were there when you saw the horses?
A. Yes, sir.
Q. You didn't hear the shooting?
A. Yes, sir, before I seen the horses; about the time I was crossing the fence.
Q. Was the shooting over when you saw the horses?
A. No; they were still shooting up there.
Q. You didn't see anybody?
Ans. No, I never seen anyone at all.
68 Q. What kind of guns?
A. It appeared like it was shotguns; I just heard the report, and that is what I took it to be.
Q. Now, the firing you took to be about 40 or 50 yards north from the horses?
A. Yes, sir.
Q. You saw the horses; and down there, right opposite where the horses were, 40 or 50 yards from the road?
A. It appeared to be a little upwards from the horses; to the right, but a little upwards from where I was at.
Q. You met these parties about 100 yards from your house?
A. 100 or 150.
Q. Right close to the fence?
A. No; they was down a northeast course from the fence.
Q. Now, you say when you met them you talked with both of them?
A. Yes, sir; they was both talking.
Q. They were friendly?
A. Yes, sir; laughing and talking.
Q. Perfect good humor?
A. Yes, sir.
Q. Did Alexander or Steadman have the duck tied to his saddle?
A. Steadman.
Q. You say Steadman spoke up and said they would have to go on and tend to their stock. Do you recollect that any better then you did when you were before the commissioner; have you got any better memory than you had when you were before the commissioner? Read that [reading from commissioner's proceedings]: "They spoke up and said they would have to go on and tend to their stock." Is that right?
A. That will be right.
Q. Yes, sir. Then they both spoke up and said they would
69 have to go on and tend to their stock, and you went on and turned down a slough?
A. Yes, sir.
Q. You went 50 or 75 yards. You went across the slough?
A. Yes, sir.

Q. You didn't go to where you had started to go?
A. No, sir.
Q. There wasn't deep water in the slough?
A. There was a big hole in the slough that the ducks used?
Q. How far from the road?
A. Well, it was closer at the lower end, where it come some 40 or 50 yards from the road.
Q. Up north of the road?
A. Yes, sir.
Q. The lower end of that would be 40 or 50 yards from the road?
A. Yes, sir; where the ducks used it.
Q. That was a long hole, extending up some distance?
A. Yes, sir.
Q. How far?
A. 75 or 100 yards from the road.
Q. The furtherst part would be about 150 yards from the road?
A. Yes, sir.
Q. You didn't hear any shooting up there?
A. I heard a gun fired.
Q. When?
A. About the time I was starting from the house. I forgot which, about the time, or a little after; it was about the time I was leaving the house; a little before, or a little after.
Q. Did you hear the gun when you were at the house?
A. I could not say?
Q. Did you hear any gun at all?
A. Yes, sir.
Q. You never told that before?
A. Well.

Q. And you state before the commissioner that when they went
70 on you turned and went down the slough; you say you went across the slough, the way the road run.

A. I went on a few steps in the road, and then came back to the slough, and went down the slough.
Q. Why didn't you go on up the slough.
A. I thought they had raised the ducks, and it was getting late.
Q. Why didn't you turn back when they did. Why did you go on and wade the slough?
A. I never thought about the ducks not being there until I thought about them being there, and rousting them out, and thought it was late.
Q. Did you notice their tracks in the road?
A. They had come along the road as far as I went.
Q. You went some distance across the slough?
A. I went 10 or 15 yards, and may be a little further.
Q. And they had been on the road?
A. Yes, sir.
Q. How far did you go down the slough before you crossed it?
A. 40 or 50 yards.
Q. Before you crossed the slough; on the east side?
A. Yes, sir.
Q. You forded the slough twice?

A. It was dry.

Q. Dry both places?

A. There was a pole across where I crossed the first time.

Q. Anybody living up there at that time, at that little house?

A. Yes, sir; a man by the name of Cochran.

Q. Did you see Cochran?

A. He wasn't at home.

Q. Did you see his family?

A. He didn't have any family.

Q. Where was he gone?

A. I don't know.

71 Q. How far did he live from your house?

A. It was about 100 or 150 yards.

Q. He lived outside of the field, on the road?

A. Yes, sir.

Q. You lived in the field, across the road?

A. Yes, sir.

Q. You said before the commissioner, at least it is written down here, that the shots were right close to where the horses were standing. Is that right?

A. About 40 or 50 yards, if I am not mistaken, that is the way I spoke it before.

Q. This is what you said: "The shots were right close to where the horses were standing. I heard as many as eight shots. I heard some shooting and I went on about 25 or 30 steps, and I seen the two horses that they was riding standing by the fence. One of them looked like he had his bridle throwed over the fence post. The shots were right close to where the horses were standing. I heard as many as eight shots." Is that right?

A. It must be.

Q. That the shots were right close to where the horses were standing?

A. I said, if I am not mistaken, that it was 40 or 50 yards.

Q. That is a fact, that the shots were right close to where the horses were standing?

A. Yes, sir; they was about that distance; I didn't pay much attention to the shooting.

Q. You didn't hear anything said; didn't hear anybody whoop, or halloo, or sing?

A. I just heard some shooting; there was about seven or eight.

Q. Did you count them?

72 A. No; they was fired pretty close together.

Q. You heard two close together?

A. They was the last shots, and the only ones that I paid any attention to; they sounded louder than the others.

Q. You didn't say anything about that before the commissioner?

A. They was a larger gun, I said before.

Q. Here is what you said (reading from commissioner's proceedings): "I heard some shooting and I went on about 25 or 30 steps and I seen the two horses that they was riding standing by the fence. One of them looked like he had his bridle throwed over the fence post. When I saw the horses they stood at the side of the road. Mr. Alexander's horse

was loose, and the one Mr. Steadman was riding looked like it was tied to the fence; its head was turned towards the fence; the other looked like its bridle was thrown down over his neck. These shots appeared to be about 40 yards from the road. I know where the body was found; this was pretty near where the shots seemed to be. When I heard the shots I had been down to the slough and was turned back and was coming up on the inside of the fence and was still below the house. I was somewhere about 300 yards from the shooting when it commenced. I never saw anyone shoot and never heard any voices. I never paid much attention to the shots; you see people is always running through the bottom shooting deer and such stuff all the time, and for that reason I never paid much attention to any of them." Is that right?

A. Yes, sir.

73 Q. (Continuing.) "When I seen the two horses, without riders, and heard the shots, I just thought they was both out in the timber killing squirrels. They were shot-gun shots. It was just like some one shooting squirrels every now and then, and directly there was two shots just about as fast as one could shoot; you could hardly tell the difference in the shots, just like a man pulling both barrels off together." You didn't say anything there about these being louder than the others, except that the two were close together. Did you mention before the commissioner, in your testimony before, that these last two shots sounded any louder?

A. If I am not the worst mistaken.

Q. Then the commissioner is mistaken?

A. I won't say that I did say it, but if am not the worst mistaken than I ever was in my life, I did.

Q. Do you recollect saying it?

A. It seems to me I said it.

Q. It seems to you you said those two last shots sounded louder than the others. Did you say it before the commissioner?

A. I don't say that I did say it, positively.

Q. You state here that the shooting was over before you got to the house; that is, that the shooting had hushed before you got to the house. That is what you state now, is it?

A. Yes, sir.

Q. Did you hear any shooting after you got to the house?

A. I don't remember.

Q. Were all the shots that were fired, fired close together; where were you when these two shots were fired?

A. I was getting close to the house when they fired.

Q. (Reading.) "When I heard the shots I was going to the
74 house, and I just kept on going to the house; by the time I got there the shots had hushed." There was no shooting after you got to the house, I presume?

A. I didn't pay any attention to it.

Q. The two loud shots were before you got to the house?

A. Well, they must have been.

Q. Those were the last you heard?

A. The last I paid any attention to.

Q. You were not paying much attention to the shooting?

A. No, sir; no way.

Q. The next day, when you saw Alexander down at the store, and he stated in your presence that his partner was lost, and it had been reported, what did he say?

A. Well, he said—him and Perry was talking—and he said something about his partner being gone or missing, or something like that, and when I went in, I went to where him and Perry were talking, and he was saying something about his partner being gone, and I asked him if he had heard anything about his partner, and he said he hadn't, and he said he had gone off once before, and was gone for nine days and he hadn't seen nor heard tell of him, and he had been hunting for him, and he wasn't going to hunt any more until he heard from him.

Q. Well, he told you he had been hunting for him?

A. I was speaking to him about having seen him the day before——

Q. You didn't say anything about that before the commissioner?

A. I don't remember that I named it to him at all.

Q. How long after you saw these men pass you until you saw
75 the horses in the road?

A. Well, it was somewhere about 10 or 15 minutes; I don't remember the time.

Q. I will ask you if you have read over your testimony since you have been here?

A. I reckon so.

Q. Do you know?

A. Yes, sir.

Q. Who read it to you?

A. That Mr. there [pointing to Col. Clayton]. I don't know his name.

Col. CRAVENS. Mr. Clayton. You say before the commissioner that the length of time after you met these men before the shots were fired—what did you say about it then?

A. I don't remember.

Q. What do you say about it now?

A. I said it was somewhere between 10 and 15 minutes, and may be a little longer.

Q. You say before the commissioner that "it was about ten minutes after they had passed me that I saw the horses in the road without any riders." Now you put it at 10 or 15 minutes, and may be a little longer.

A. I don't remember the exact time.

Col. CLAYTON. That is near enough.

Col. CRAVENS. I am not trying to please you; I don't care whether you think so or not. I think I have the right to examine a witness without being interrupted. [To witness.] Why do you say you think it was 10 or 15 minutes, may be a little longer? Why do you want to increase the time?

A. Because I don't remember the exact time.

Q. You don't remember better than you did when you was before the commissioner. When were you before the commissioner?

76 A. Well, sir, I couldn't tell you the day at all.

Q. What day of the month was it you saw these men pass your house?

A. It was the 21st day of October.

Q. Did you have an almanac in your house?

I never.

Q. How do you know it?

A. Because I do. I know that, for my brother-in-law started to Missouri the next morning.

Q. What brother-in-law?

A. A fellow by the name of Underwood.

Q. Where did he live?

A. There, in the Rabbit House.

Q. How do you know he started the next morning; how do you know what day the next morning was?

A. Well, it was because it has been in my recollection all the time.

Q. Did you have an almanac?

A. No, sir.

Q. Did you look at an almanac?

A. No, sir.

Q. Where was his wife living?

A. At the Rabbit House.

Q. Why should that impress it upon your mind? Did you write it down?

A. I don't know as anything makes it bear upon my mind any more than anything else.

Q. Do you know what day you were married?

A. Yes, sir; 20th day of last January; a year ago.

Q. What day of the week was it?

A. Monday.

Q. What day of the week did you start down here on, James.

A. I started down here on Tuesday.

Q. What day of the month was it?

A. I couldn't tell you that.

Q. How come you to know, James, that it was on the 21st day of October?

A. Well, I told you as well as I could.

Q. You say it was a very common thing to be shooting around there in that country, and you didn't pay much attention to the
77 shooting?

A. I didn't think anything about it?

Q. You didn't have any almanac and didn't write it down?

A. No; I never wrote it down.

Q. Do you ever hunt around there, except with anyone?

A. Yes, sir.

Q. Where?

A. Around in the bottom and around about there?

Q. Did you lose your belt in there?

A. Yes, sir.

Q. Where?

A. Up above where Steadman was found.

Q. How far from where the bones were found?

A. About 100 yards from the bones; something over 100 yards; about 200 yards.

Q. You lost your belt that day—that is, the day Steadman disappeared?
A. Yes, sir.
Q. Was it within 100 yards of the place?
A. No, sir; it wasn't.
Q. Did you go out and hunt for your belt that evening?
A. Yes, sir; I and my father and brother went down to where we had been shooting at a deer.
Q. Where did you father live?
A. He was living on the Lipscomb farm?
Q. What was you doing at that time?
A. I was picking cotton for Perry, and they run a deer through there, and we went out to see if we could shoot it.
Q. What time in the evening was it when you lost your belt?
A. About 3 o'clock.
Q. How long did you hunt for it?
A. We didn't hunt for it any time; it was found afterwards; it
78 was raining the day it *it* was found; there was a shower of rain that day.
Q. You say there was a shower of rain on the day Steadman disappeared?
A. Not on the day Steadman disappeared.
Q. You didn't find your belt the day he disappeared?
A. No, sir.
Q. Did you find it?
A. No, sir; somebody else found it.
Q. When was it found?
A. I don't know that; I never found it myself at all.
Q. Did you ever get it?
A. Yes, sir.
Q. When?
A. It was in a week, or such a matter, afterwards?
Q. Now, don't you know it was found on the same day Steadman's remains were found there?
A. Yes, sir.
Col. CLAYTON. Found the same day you lost it?
A. Yes, sir.
Col. CRAVENS. He didn't say that. Now, I will ask you if, shortly after this, you didn't spend some gold at the store there?
A. Yes, sir.
Col. CLAYTON. That necessitates us sending for other witnesses. We understood you were not to say anything about that.
Col. CRAVENS. How much?
A. I spent a couple of dollars—a dollar and a half or two dollars?
Col. CLAYTON. When was that spent?
A. I have no idea; I don't remember.
Col. CRAVENS. How much did you have?
A. I had a ten-dollar gold piece.
Q. Is that all you had?
A. That is all the gold I had.
Q. Where did you get the gold
A. I got it from my mother.

79 Q. Where did she get it?

A. She borrowed it from my brother-in-law.

Q. Which one?

A. Guffy.

Q. The one that your sister, Tennessee, married?

A. Yes, sir.

Q. How much did she get from Guggy?

A. A ten-dollar gold piece; the only change he had.

Q. Your wife borrowed it and lent it to you?

A. No, my mother borrowed and gave it to me to spend for her at the store; she was the one that wanted it.

Q. How long after you moved over to your mother's?

A. I don't remember the length of time.

Q. Where did your brother-in-law get the money to bear his expenses to Missouri?

A. I don't know; he never had a cent of money when he left home; if he had any, I don't know.

Q. You think he didn't have any?

A. I am satisfied, most satisfied, that he didn't have any; he borrowed the money from this same fellow.

Q. From Guffy?

A. Jerry Guffy.

Q. He borrowed it?

A. Yes, sir; or rather Guggy paid his way back there, and got his ticket at Muskogee for him.

Q. For where?

A. For Missouri.

Q. Guffy furnished the ticket?

A. Yes, sir.

Q. Where was Guffy living at this time?

A. He was staying at a fellow by the name of Stover, on this place.

Q. Where does Stover live?

A. On the south side of the farm.

(Adjourned until to-morrow morning.)

80 JUNE 18TH, 1890, 8.50 a. m.

B. J. JAMES—(Continued.)

Cross-examination.

Col. CRAVENS. Mr. James, did I understand you to say that Alexander was at your house hunting for his partner.

A. No, sir.

Q. He was by there?

A. No, it was Mr. Bruner.

Redirect.

Col. CLAYTON. This belt of yours that was lost on the day the body was found, what kind of a belt was that?

A. It was a pistol belt and money belt together; it was made to carry money and a pistol, together.

Q. Did it have any money in it?

A. No, sir.
Q. You lost it in the field, down next to Perry's cotton patch?
A. It was something about a quarter from the corner.
Q. How far from where the body was found?
A. I don't recollect exactly how far.
Q. How far in the field?
A. Right near to the fence.
Q. Who found the belt?
A. A fellow weighing cotton for Perry.
Q. You claimed it at once?
A. Yes, sir; we had been picking cotton, and it was just about noon, and we had started home, and some boys had been running deer through the field, and I cut across through the field and got to the fence near the place where I lost my belt; when I got to the corner I run down the string of fence, and shot at the deer.

Col. CRAVENS. What with?

A. A rifle.

81 Col. CLAYTON. Go ahead.

A. I went down there to where I lost my belt, and I had to stop, and I pulled off my belt, and me and my brother was together, and I pulled off my belt and laid it down, and just about the time I was pulling up my pants the deer commenced to run.

Q. You stopped there to attend to the call of nature?
A. Yes, sir.
Q. And left your belt there?
A. Yes, sir.

Col. CRAVENS. You would have caught the deer if it hadn't been for that?

A. I don't know as I would.

Col. CLAYTON. Now, in regard to this ten dollars that you had; that was ten dollars in gold?

A. Yes, sir.
Q. You got that from your mother?
A. Yes, sir; she borrowed it from my brother-in-law.

Recross-examination:

Col. CRAVENS. You say that on the day Steadman disappeared it rained some?

A. No, sir; not on the day he disappeared; it was on the day his body was put away.
Q. Didn't you state that it rained the day he disappeared?
A. No, sir.

Col. CLAYTON. Col., you get a little mixed; you get him losing his belt the day the man disappeared. (To witness:) It was the day it rained that you lost your belt?

A. Yes, sir.
Q. And that was the day the body was buried?
A. Yes, sir.
Q. And that was the day it rained?
A. Yes, sir.
Q. That was sometime after he disappeared?
A. Yes, sir; I don't remember the length of time it was.

82 J. W. MARTIN.

Col. CLAYTON. You were before the commissioner, I believe?
A. Yes, sir.
Q. You and Mr. Hogan, both?
A. Yes, sir.
Q. Your name is J. W. Martin?
A. Yes, sir.
Q. Where do you live?
A. In the Creek Nation.
Q. How far do you live from Lipscomb's store?
A. About a mile and a half.
Q. What direction?
A. Northeast.
Q. Do you know the defendant in this case, Alexander?
A. Yes, sir; I have saw him.
Q. Did you know Mr. Steadman in his life time?
A. No, sir.
Q. Do you remember the day on which he was missing from the country?
A. Yes, sir.
Q. He and the woman, Mrs. House?
A. Yes, sir.
Q. Please state where you were that evening?
A. I was at Choska that day, most all day.
Q. What time did you leave Choska to go home?
A. Pretty near 6 o'clock; between five and six.
Q. On your way home, please state if you saw the defendant?
A. Yes, sir, I met him.
Q. Anybody with you?
A. Mr. Hogan.
Q. Where did you meet him?
A. Right at the corner of the Lipscomb farm; southeast corner.
Q. What was he doing there?
A. Setting on his horse, and holding another horse.
Q. What kind of horses were they?
83 A. One was a bay horse bald-faced, and the other, I think, was a sorrel.
Q. Did the horse that he was holding have a bridle and saddle on?
A. Yes, sir.
Col. CRAVENS. Did you state what kind of a horse he was riding and which one he was holding.
A. I am not certain, but I think it was the bald-faced one.
Q. There was a bald-faced and a sorrel?
A. Yes, sir.
Col. CLAYTON. You are not certain as to which Alexander was riding?
A. No, sir.
Q. Did he say anything to you?
A. Yes, sir.
Q. What did he say?

A. He said, "If you meet a man up the road with a gun tell him to come on, I am waiting for him."

Q. What time was this?

A. Between five and six o'clock.

Q. When did you first learn that Steadman was missing?

A. I heard it the next morning.

Q. Where was it (showing witness map) that you met him?

A. (Witness designates on map, and place shown to jury.)

Q. Which road were you going?

A. I was going home, and I turned up north when we met him.

Q. Where these two roads meet and form one—one of them going down by the Rabbit House and the other up where you lived—you met him there?

A. Yes, sir.

Q. He was sitting on one horse and holding the other?

A. Yes, sir.

Q. And he said if you met a man, to tell him to hurry up, he was waiting for him?

A. Yes, sir.

84 Q. What time was this?

A. Between five and six o'clock.

Q. When did you first learn that Steadman was missing?

A. I heard it the next morning.

Q. This was at the corner of Lipscomb's field.

A. Yes, sir.

Q. Do you know where they were camped?

A. No, sir.

Q. Do you know where Jim Bruner lives?

A. Yes, sir; I have been there several times awhile after that.

Q. Now, then, were you present when the body was found?

A. No, sir.

Q. Were you ever at the place?

A. Yes, sir.

Q. How far from that place was it that you met this man?

A. It is about a mile, I think, as near as I can guess.

Q. In what direction?

A. It is east.

Q. How far from the corner of Meagher's field?

A. Pretty near a mile.

Q. How far from the other corner?

A. I don't know.

Q. When you met him it was between the place where the body was found and this store.

A. Yes, sir.

Q. And between their camp—between Jim Bruner's and that place.

A. Yes, sir.

Col. CRAVENS. You was there when the body was found. Was that before the body was buried?

A. No, sir; it was afterwards.

Col. CLAYTON. Now, Mr. Martin, did you say you started up this road and went north when you met Alexander?

A. Yes, sir.

Q. Was he right at the corner?

85 A. Yes, sir; he was standing right at the corner, and I turned in between him and the corner of the field when I passed him.

Q. Please state whether you had passed the corner when he spoke to you?

A. No; I was just about even.

Q. Mr. Hogan was with you?

A. Yes, sir.

Cross-examination:

Col. CRAVENS. What time of day did you say this was?

A. It was pretty near six o'clock.

Q. What kind of a day was that, if you remember, as to being clear or c'ou/dy?

A. I could not tell you.

Q. Do you know whether it rained any that day or not?

A. I don't think it did.

Q. I will ask you if Alexander, when you met him, if he wasn't just beyond the corner a little—down beyond the corner a few steps?

A. No, sir; he was a little east of the corner; I went between him and the corner of the fence, and turned north.

Q. Was that *that* the first that was said?

A. I might have bid him the time of day.

Q. And just as you rode up he said: "If you meet a man up the road with a gun, tell him to come on I am waiting for him;" or "Tell him to hurry up?" What reply did you make?

A. I told him all right.

Q. Did you leave him standing there?

A. Yes, sir.

Q. You passed on and turned to the left?

A. Yes, sir; I went north.

Q. That would be to the left?

A. Yes, sir.

86 Q. Did the man there have a gun, that you saw on the horse?

A. I won't be positive.

Q. What is your best impression?

A. I think he had a gun.

Q. You didn't see a pistol, or anything about him?

A. No, sir.

Redirect:

Col. CLAYTON. Did you meet a man with a gun?

A. Yes*m*, sir.

Q. Who was it?

A. Mr. Guggy.

Q. How far?

A. A quarter of a mile from there?

Q. You went on up on that north road, and about a quarter of a mile you met Guggy, who did have a gun?

A. Yes, sir.

Col. CRAVENS. Q. That is a brother-in-law of the James?

A. Yes, sir.

Col. CLAYTON. He did have a gun?

A. Yes, sir.

Q. I suppose you thought he was the man?

A. Yes, sir.

Recross-examination:

Col. CRAVENS. When you got up there to the place where he was (Alexander) you were going directly from the Choska store. How far did you say it was from where you were, on up to the body?

A. I guess about a mile.

Q. Did you hear any shots up there in that direction, shortly before you met him?

A. No, sir.

Q. Didn't hear any at all?

A. I don't remember hearing any; it is a common thing to hear shooting.

Q. Had you ever seen Alexander before you met him?

A. No, sir; not that I know of.

Q. It was a stranger you met, and he said: "If you meet a man tell him to come on, I am waiting for him?"

A. Yes, sir.

87 Q. You said: "Well?"

A. Yes, sir.

Q. You didn't stop at all?

A. No, sir.

Q. You left him standing there, on one horse—you think it was the bald-faced—and leading the other.

A. Yes, sir; I am not positive which one he was holding.

Q. You went on your way, did you, and met Guffy; how far had you gone?

A. About a quarter.

Q. How far would that be from the place where the body was found?

A. It would be a mile or more.

Q. (Showing witness map.)

A. (Witness.) This road that we were on runs north along the side of the fence aways, and then it turns across and runs northeast, and then you pass a house, and it was just beyond that house that we met him.

Q. Then you would be getting nearer the body than you was when you met him?

A. I don't know.

Col. MELLETTE. You haven't got the position of the body right.

Col. CRAVENS. Was you there?

Col. MELLETTE. Yes, sir; ask me and I will tell you.

Col. CRAVENS (to witness). Then you met Guffy about a quarter from the corner.

A. Yes, sir.

Q. What kind of a gun did he have?

A. A Winchester, I think.

Q. Were you acquainted with Guffy at that time?

A. No, sir; never saw him before that I know of.

Q. Have you seen him since?
A. Yes, sir.
Q. When did you next see him?
A. Sometime after that.
88 Q. You didn't know who it was at the time you met him.
A. No, sir.
Q. Now, you met him in a northeast direction from where you met Alexander?
A. Very little east; it was some east.
Q. The road runs up due north, and then turns and runs in a northeast course, and you met him after you had turned in a northeast course. How far is your house from the point where you met Alexander?
A. About a quarter, I reckon.
Q. Were you as far east as your house when you met Guffy?
A. No, sir; about half way between the second corner and my house.
Q. Guffy riding or walking?
A. Walking.
Q. Did you have any conversation with him?
A. None; only told him what the man told me.
Q. What did he say?
A. He said all right.
Q. You told him you had met his partner. What did you tell him?
A. I told him a man down there was waiting for him; I believe that is about all I said, and he says "all right," and we rode right on.
Q. You didn't say any more to him?
A. No, sir.
Q. Where did you next see him?
A. I believe he passed my house the next time.
Q. When was that?
A. About a day or so after the body was found, was the first time I recollect of seeing him.

Redirect.

Col. CLAYTON. That house you speak of was a colored man's cabin?
A. Yes, sir.
89 Q. You had just passed that?
A. Yes, sir.
Q. What is the name of the house—the colored man's cabin? Whose house is it?
A. I don't know.
Col. CRAVENS. As you were coming up to where Alexander was, the road runs down by the side of Lipscomb's farm, from Choska store. That road you came up on from the store?
A. Yes, sir.
Q. How far could you see Alexander, or the man you saw on the horse, before you got to him?
A. I could see him 40 or 50 yards, maybe 100.
Q. I will ask you if there isn't a wide road coming along there?
A. Yes, sir.
Q. It is level bottom land?
A. Yes, sir.

Q. When you first saw him, he was standing there—still—on his horse?
A. Yes, sir.
Q. Apparently waiting?
A. Yes, sir.
Q. He stood there until you rode up to him?
A. Yes, sir.
Q. How far did you see him before you got to him?
A. I don't recollect; I seen him, though, 40 or 50 yards before I got to him.
Q. Couldn't you see him further than that?
A. I could if I had been noticing; I mightn't been looking.
Q. He appeared to be quiet and not excited in any way?
A. Didn't seem to be; I didn't pay much attention to him.
Q. What is the name of the man you met afterwards?
A. Guffy—Jack.
Q. You could have seen him, if you had been noticing, for 90 100 yards?
A. Yes, sir.
Q. It might have been 100 yards?
A. It might have been; I could have seen him that far.
Q. The first you noticed of the man he was standing at the corner?
A. Yes, sir.
Q. And the last you saw of him he was in the same position?
A. Yes, sir.
Q. Now, didn't that man say when you spoke to him, say: "I guess he isn't waiting for me?"
A. No, sir; I don't recollect of him saying that.
Q. Did you see defendant at the store the next day?
A. No, sir.
Q. Who was it that was with you?
A. Thomas Hogan.
Q. Is he here?
A. Yes, sir.
Col. CLAYTON. This defendant was sitting on his horse when you first saw him?
A. Yes, sir.
Q. You looked up the road about 50 yards and saw him sitting there?
A. Yes, sir.
Q. You say you never saw him before?
A. No, sir.
Q. You have seen him since?
A. Yes, sir.
Q. That is the man sitting there? (Pointing to defendant.)
A. Yes, sir.

T. K. HOGAN.

Col. CLAYTON. T. K. Hogan; that is your name?
A. Yes, sir.
Q. Where do you live?
A. In the Creek Nation.

91 Q. On the Choska Bottom?
A. Yes, sir.
Q. How far do you live from Mr. Martin?
A. I live about——
Q. How far did you live at the time Steadman was missing?
A. In the same house.
Q. Do you remember what day of the week he was missing?
A. On Monday.
Q. What day of the month?
A. I think on the 21st of October.
Q. Where were you on the evening of that day?
A. I was at Choska Store.
Q. That is Lipscomb's store?
A. Yes, sir.
Q. What time did you go to your home?
A. I think it was near about between five and six o'clock.
Q. Please state if you saw the defendant that evening.
A. Yes, sir.
Q. Where did you see him?
A. I saw him at the corner of the Lipscomb farm.
Q. Who was with you?
A. Martin.
Q. What was he doing there?
A. He was setting there on a horse and he was holding another horse.
Q. Anybody on it?
A. No, sir.
Q. Have a saddle?
A. Yes, sir; and bridle.
Q. What kind of horses were they?
A. I think defendant was riding a sorrel, and the other was a bald-faced light bay.
Q. Did you say anything to him or he to you?
A. We just passed the time of day, and he says to me and Martin, "If you see a man up the road with a gun on his shoulder, tell him to come on, I am waiting for him."
92 Q. How far did you see him before you got to him?
A. Probably 100 yards.
Q. Was he riding?
A. He was setting there on his horse.
Q. What time of day do you think that was?
A. I can't tell, positively; but I think it was between five and six o'clock in the evening.
Q. Then you went on in what direction?
A. I went north from there a little ways, and then turned in a north-east course.
Q. Did you see anybody on that road?
A. Yes, sir.
Q. Who was it?
A. I didn't know the man's name at the time, but since, I have seen him. It was Mr. Guffy; I believe, Jake Guffy.
Q. (Showing witness map.) You were present when this map was made?

A. No, sir; I never seed the map before.
Q. You met Alexander at the corner?
A. Yes, sir.
Q. You say this road you took goes north from there?
A. Yes, sir; and then it goes northeast.
Q. Where did you meet Guffy?
A. Near up here by this fence, somewhere.
Q. Was there a nigger cabin up there?
A. Yes, sir; I think I met him right close to that nigger cabin.
Q. Were you over to the body? Do you know where the body was found?
A. I was there after it was found, and after it was buried, I went down there.
Q. How far was the place where the body was buried, to the place that you met defendant?
A. I think it was a mile, probably; maybe more; I could not say positively.

93 Q. Did you speak to Mr. Guffy when you met him up there?
A. Yes, sir; I told him a man was waiting for him.

Q. Do you know the name of the colored man?
A. Yes, sir; we called him Mr. Calvin.
Q. Colored man, was he?
A. Yes, sir.
Q. That is the cabin where you met Guffy?
A. Yes, sir.
Q. Do you know where these men were camped?
A. No, sir.
Q. Did you know Steadman?
A. No, sir.

Cross-examination.

Col. CRAVENS. You say you saw Alexander sitting there on his horse for 100 yards before you got to him?
A. Yes, sir; I think so.
Q. You met him, and you say you passed him at the corner of the Lipscomb farm?
A. Yes, sir.
Q. (Shows witness map, and he designates place where he met defendant, and the road he took when he left him.)
Col. BARNES. Was there any timber in there between the two roads?
A. No, sir; no large timber; it looked like an old field.
Q. Col. CRAVENS. How far is it from there, Mr. Hogan, to the corner of the Meagher's field. How far is it from the corner of the Lipscomb field to the corner of the Meagher's field?
A. It is probably 200 yards; maybe not over 150.
Q. The body was found fown here near this corner (northeast)?
A. Yes, sir.

Q. When you met Guffy, you told him a man was waiting for
94 him down at the corner of the fence. Did he say, "I guess he is not waiting for me?"

A. I could not say whether he made any reply at all; I just told him, and I couldn't say whether he made any reply.

Q. Did you tell him or did Mr. Martin?

A. I could not say which one of us told him; one of us told him, but could not say which one it was.

Q. Which way was the defendant faced; which way was his horses' heads?

A. Towards the store; Lipscomb's store.

Q. Towards the west?

A. Yes, sir.

Q. You were headed east?

A. Yes, sir.

Q. Did he have any gun?

A. Yes, sir.

Q. Where was the gun?

A. He was holding it right in front of him, on the saddle?

Q. You saw no other arms?

A. No, sir.

Q. He says to you like this: "If you meet a man up the road, with a gun on his shoulder, tell him to come on, I am waiting for him?"

A. Yes, sir.

Q. You were going directly from the Lipscomb store?

A. Yes, sir.

Q. How far back to the Lipscomb store from the corner of the fence?

A. It is about half a mile; hardly half a mile.

Q. After you left the store, going out that way, did you hear any shots?

A. I think I did, yes, sir; one shot.

Q. That was after you left the store?

A. Yes, sir; just before I seen Alexander.

Q. What direction was it?

95 A. It was back, kind of northeast; it was right in that field northeast up to the left of the road going towards Meagher's farm.

Q. That was just before you met the defendant?

A. Yes, sir.

Q. How far off did that shot appear to be?

A. I could not tell; I just heard the report of a gun up in that direction.

Q. Now, after you heard the report, it was a little bit until you saw the defendant; after you went a hundred yards, you say it was a little over a quarter, how far did you say it was down to the store?

A. Near about a half mile.

Q. You saw defendant for about a hundred yards before you got to him; it couldn't have been him that fired that gun?

A. No, sir; I don't think it was.

Q. From where you heard the gun, and where you saw him, it couldn't have been him?

A. No, sir.

Q. The report appeared to be in a little to the left of the road?

A. Yes, sir; I think it was in a northeast course.

Q. Well, that would be a northeast course, a little to the left of the road?

A. Yes, sir.

Q. I believe you said that the defendant had a gun and no other arms?

A. Yes, sir; none that I saw.

Q. Did he have on a coat?

A. Yes, sir; I think he did.

Q. Did you see the place where the deceased was found before he was buried?

A. No, sir.

Q. Did you ever see the place?

A. Not until after he was buried; I went down there—several of us went down there after he had been found and buried.

Q. What kind of a gun was it that you heard—a Winchester?

96 A. I could not tell.

Q. Any difference between a Winchester and a shotgun?

A. You can't tell much difference; there is a difference right close, but off a distance you can't tell the difference.

Q. You can't tell whether it was a Winchester or a shotgun?

A. No, sir.

Q. From the report?

A. No, sir.

Q. Now, when you met Gutly he had a gun?

A. Yes, sir.

Q. What kind?

A. I could not be positive, but I think it was a Winchester.

Q. You met Gutly east of the point—I don't mean due east, but further east than you met the defendant?

A. Yes, sir.

Q. You lived in the same house with Martin?

A. Yes, sir.

Q. How near Martin's house was it?

A. It was about half way between Martin's house and the corner of the field.

Q. He was beyond the colored man's house; I mean between the colored man's house and Martin's?

A. Yes, sir.

Q. Is that colored man's house about half way between the corner of the field and Martin's corner?

A. Yes, sir; I think we met him about 50 yards from the colored man's house.

Q. Did you see anybody that day when you passed the colored man's house, at the house?

A. I don't remember.

Q. What did Gutly say when you told him there was a man waiting for him?

A. I don't know whether he made any reply; I don't know whether he made any at all or not.

97 Redirect:

Col. CLAYTON (showing witness map). Where were you when you heard the shot?

A. I was along here between the corner and the store.

Q. And the shot fired in a northeast direction?

A. Yes, sir; I called it a northeast direction.

Q. You were going in this direction, and the body is here, a little to the south, and east of where you were?

A. Yes, sir.

Q. And it was about in northeast?

A. Yes, sir; northeast from the corner.

Q. You took it to be up on the road you lived on?

A. Yes, sir. (Witness points out on map where he took shot to be, the same is shown to jury.)

A. You see there is 160 acres cut out of the southeast corner of Mr. Lipscomb's farm, and it makes three corners in there. From the corner, where we met defendant, the road runs north, and cuts across the corner, and then goes up to the next corner, where I lived.

Q. At any rate it was up northeast; up in the direction of where you lived that you heard the shooting?

A. Yes, sir.

Recross-examination:

Col. CRAVENS. The store is nearly at the west side of the Lipscomb farm?

A. Yes, sir.

Q. You were going on this road from the store to the corner?

A. Yes, sir.

98 Q. Awhile ago you said you thought the shooting was at the left of the road that runs along the side of Meagher's field; didn't you say it was to the left of the road that runs along the north side of Meagher's field?

A. Yes, sir; I didn't pretend to take the points of the compass, but it was to the left of the road that runs along the side of Meagher's field; I took it to be in a northeast course.

Q. You wouldn't be surprised to learn, or to have learned afterwards, that that shot was right in the side of the road that runs by Meagher's farm?

A. I would think it was nearer in the direction of the road I was going.

Q. You were going directly east?

A. I say I think it was nearer in the direction of home than the other way.

Q. Do you think it was a due northeast course?

A. I don't know.

Q. Might it not have been between a northeast and a north; I understand you were riding along casually and heard the shot; it was nothing unusual to hear shooting?

A. No, sir.

Q. Did you pay any attention to it to locate it; where it was?

A. Except that it was in front of me.

Col. BARNES. Do you know which way the wind was blowing?

A. I don't know.

Col. CLAYTON. You think the shot was between the two roads?

A. Yes, sir.

Col. CRAVENS. I will ask you if the wind had been from the southwest wouldn't it have made the report sound more to the left than it was?

A. I could not say.

99 Col. CLAYTON. When did you first remember that you had heard a shot out there; I see in your examination before the commissioner you say you never heard any shot. Where did you first learn that; after you got down here? Because before the commissioner you certainly swore that you didn't hear any shots.

A. If I did, it is a mistake.

Q. It is a very serious mistake.

Col. CRAVENS. I object to Mr. Clayton lecturing the witnes' *witness*, or proceeding in that manner.

The COURT. Let him go on.

Col. CLAYTON. When did you first learn that you heard any shot?

A. I don't know.

Q. Have you been in Mr. Barnes' or Mr. Cravens' office?

A. No, sir.

Col. CRAVENS. I wish you would ask him if he ever spoke to Mr. Barnes or myself.

Col. CLAYTON. You are the only one I have any fears of. (To witness.) You can't account how it was that before the commissioner you testified that you never heard any shots.

A. I don't know how it was.

Q. This is your testimony: "I went on and left him standing there; I never heard any shots; this was between five and six o'clock; I don't know what kind of a gun he had; I couldn't say positively it was a shot gun." That is all.

Col. CRAVENS. Mr. Hogan, did you ever speak to me in your life?

A. No, sir.

100 Q. Did you ever speak to Mr. Reed, or he to you?

A. I have spoken to him a time or two on the street.

Q. Did you ever speak to Mr. Barnes?

A. No, sir.

Col. CLAYTON. Where did you get acquainted with Mr. Reed?

A. I speak to him.

Q. Where did you get acquainted with him; why do you speak to him?

A. I don't know; only he just speaks to us; I go along the street with Mr. Johnson, and he just speaks to the crowd.

Mr. REED. You mean I speak to you on the street?

A. Yes, sir.

Col. CLAYTON. You still insist that the shot was at the left of the road?

A. Yes, sir.

J. L. GUFFY.

Col. CLAYTON. Mr. Guffy, what is your name?

A. J. L. Guffy.

Q. Do you know this defendant?

A. No, sir; I don't believe I do.

Q. Do you remember the day upon which a man by the name of Steadman was missing from your country, or is said to have been missing?

A. Yes, sir.

Q. Where were you on that day, and in the evening?

A. I was at Mr. James', out on Lipscomb's farm.

Q. What James is that?
A. J. W. James; an old gentleman.
Q. Is he here?
A. Yes, sir.
Col. MELLETTE. That is old man James?
A. Yes, sir.
Col. CLAYTON. Now, Mr. Guffy, you were at his place in the evening?
A. Yes, sir.
101 Q. Where did he live?
A. He lived on the east side of the Lipscomb farm, a little over half way up the north side. There is a quarter of a mile jog in the fence, and he lived up on this east string. I guess he lived about half a quarter from this corner. (Pointing on map.)
Q. Do you know where Martin lived?
A. Yes, sir; he lived half a quarter north of Martin. James lived on the inside of the fence, and Martin lived on the outside.
Q. What was you doing there?
A. I had gone up there to get James to stand good for some money; Underwood wanted to borrow some money from me to go back home on, and we come by James' to see if James would stand good for the money.
Q. That is, secure you?
A. Yes, sir; I wasn't much acquainted with Underwood. He was a son-in-law of James, and I wasn't much acquainted with him, and he was going back to Missouri to settle up some business he had there——
Col. CRAVENS. We object to that.
The COURT. That is competent.
Q. Did you loan him the money?
A. Yes, sir.
Q. How much?
A. I loaned him $150.00.
Q. Did James stand good for it?
A. Yes, sir.
Q. He said he would see that it was paid?
A. Yes, sir; and I took his word for it.
Q. That is the reason you were at James'?
A. Yes, sir.
Q. Now, what time of day were you there?
A. I was there—I got there, I guess, about half past four in
102 the evening, and was setting there talking to the old gentleman.
Q. How long did you remain?
A. Until about half past five, staid there about an hour.
Q. Please state if, while there, you heard any shots fired?
A. Yes, sir; some seven or eight.
Q. In what direction?
A. It seemed southeast from where we was; down near Meagher's field.
Q. Do you know where the body of Steadman was afterwards found?
A. I have seen the place since then, but then I don't know just where it was.
Q. Now, you heard the shot; in what direction would you put them from that place?

A. It seemed like it was pretty much in that direction.

Q. About what time in the evening?

A. About five o'clock.

Q. You heard seven or eight of them?

A. Yes, sir.

Q. Now then, can you tell me what time in the evening that was?

A. It was just about five o'clock.

Q. Exactly five.

A. Just one minute after five; Mrs. James had asked me the time of day, so she could set her clock by my watch, and I taken my watch out and told the old lady what time it was, and it was just five o'clock, and it warn't more than a minute that we heard the shooting.

Q. Not more than a minute after you told her the time. Was James with you when you heard the shooting?

A. Yes, sir; he was setting on the porch, talking to Mr. Underwood and I.

Q. What did you do after that?

A. Set around there and talked a little bit, and went down home.

103 I wasn't living on the Meagher's place at that time; I was living right in front of where Wilson's house now stands. Wilson's house has been built since that.

Q. You then came home. Did Underwood come with you?

A. Underwood came with me down about to Calvin's cabin; Underwood came with me about half way between Calvin's cabin and where Martin lived; he lived up there in the Rabbit house, and he struck a trail going out there through the timber.

Q. How far is that place where he turned off to Calvin's cabin?

A. I guess it is 100 yards, maybe.

Q. Did he turn off before you got to Calvin's cabin?

A. Yes, sir.

Q. Now, then, please state if you met anybody in the road?

A. Yes, sir; just before I got to Calvin's cabin I met two men in the road.

Q. Who were they?

A. Hogan and Martin.

Q. Say anything to you?

A. Yes, sir; told me a man was waiting for me down to the corner. I hurried along. I couldn't tell who it was. Just after I passed Calvin's house I met an old man. I can't think of his name.

Q. Would you know it if you would hear it?

A. I don't know.

Q. Was it Lambert?

A. Yes, sir; Lambert. He says: "There is a man waiting very impatiently for you down at the corner." It was then sundown, or nearly sundown, and I hurried along, and when I got to the corner there was nobody there.

Q. How far was it from where you met these men down to the corner?

A. A little over a quarter.

104 Q. You were not before the commissioner?

A. No, sir.

Cross-examination :

Col. CRAVENS. Are you a married man ?

A. Yes, sir ; I am at the present time ; I wasn't at that time.

Q. How long after that was it you became a married man ?

A. I was married on the 12th day of December.

Q. To whom ?

A. Tennessee James.

Q. She was a sister-in-law of Underwood ?

A. Yes, sir.

Q. Underwood was a married man ?

A. Yes, sir.

Q. Who was it he married ?

A. A James girl.

Q. And on the 12th day of December you married another one of them ?

A. Yes, sir.

Q. Was you engaged to Miss Underwood at that time?

A. No, sir ; I wasn't engaged to anybody at that time.

Q. Was there any women up there ?

A. Yes, sir ; plenty of them.

Q. You were living down on Meagher's farm ?

A. Yes, sir.

Q. How far from the northwest corner of the farm ?

A. About, I think, 250 yards.

Q. Down south of the northwest corner ?

A. Yes, sir.

Q. In going down to where you lived, from James, is it the nearest way to go by the corner of the Lipscomb farm ?

A. It is the nearest road ; there is no other road to go.

Q. There is a prairie out there ?

A. Yes, sir ; but the road follows around the field.

Q. You were due north of Martin's how far ?

A. About 200 yards.

Q. There is a trail leads across from Martin's to Underwood's ?

105 A. Yes, sir ; just a little path.

Q. That is right at the southeast corner of Lipscomb's farm ; at the southeast corner of the jog ?

A. Yes, sir.

Q. There is a piece out of the southeast corner of the field, and Martin lived at the corner furthest east ?

A. Yes, sir.

Col. BARNES. Where was it Underwood took the trail?

A. Between Martin's and Calvin's.

Q. Where did Underwood leave you to go ?

A. He left me to go home.

Q. You were going down here, and turned to the right, and he was going down there, and turned to the left ?

A. Yes, sir.

Q. To the Rabbit house ?

A. Yes, sir.

Col. CRAVENS. Was that the first time you had ever been to old man James'?

A. No, sir; I had been there about once before.

Q. Was the young lady that you afterwards married at home that evening?

A. No, sir; I don't think she was.

Q. Don't you know?

A. No, sir; I don't remember of seeing her.

Q. Were you sparking her?

A. No, sir.

Q. Ever been married before?

A. Yes, sir; once.

Q. Where is your wife?

A. Dead.

Q. Where did you live before?

A. In Yell County, Arkansas.

Q. Your wife die' down there?

A. Yes, sir.

Q. When did you go to the nation?

A. In 1887, I believe.

Q. When did you come to this neighborhood, there?

106 A. I went to this neighborhood, this last May was a year ago.

Q. Where did you live when you first went there?

A. I lived on Blue Creek, about four miles from Lipscomb's farm.

Q. How long did you live there?

A. I stayed there from May until in July, and then went down in the bottom.

Q. Where?

A. On Meagher's farm.

Q. Who did you live with down there?

A. I was boarding with a man by the name of Stover?

Q. On the Meagher's farm?

A. Yes, sir.

Q. What were you doing on that day in the forenoon?

A. I was working on the fence there, on *ehl* wire fence, fixing it up.

Q. Working for wages, by the month, or by the day?

A. I was working by the day.

Q. How much did you get a day?

A. I was getting $1.75 a day.

Q. What time did you quit work that day?

A. I quit at 12 o'clock.

Q. Only worked half a day?

A. Yes, sir.

Q. What did you quit work for?

A. I quit to go up to Cohn Murphy's, four miles north of Lipscomb's farm.

Q. What did you go up there for?

A. Mr. Stover wanted to go up there to get some potatoes and turnips, and Mr. Stover wanted me to go with him.

Q. Did you get them?

A. Yes, sir.

Q. Help bring them home?
A. Yes, sir; I helped part of the way, and he left me and Uunderwood at James', and went on home.
107 Q. He came past there?
A. Yes, sir.
Q. And went on home with the wagon?
A. Yes, sir.
Q. When did you next see Underwood?
A. I saw him the next morning.
Q. Where did you see him?
A. At Stover's.
Q. He came to Stover's?
A. Yes, sir; me and him went to Muskogee together.
Q. When you next saw him, you and Underwood went to Muskogee together?
A. Yes, sir; and old man James.
Q. You went to Muskogee the next day?
A. Yes, sir.
Q. Underwood went on to Missouri?
A. Yes, sir.
Q. Where is he now?
A. He is in Missouri.
Q. Did you ever travel that trail that goes from Martin's across to the Meagher's farm?
A. Yes, sir.
Q. They are only cow paths through there?
A. Yes, sir; going different ways.
Q. Isn't there a trail leads from old man James' across to the Rabbit house?
A. Yes, sir; but it makes a turn away in east towards the slough.
Q. The Rabbit house isn't very far from the slough? Right near the slough?
A. Yes, sir.
Q. Do you know where Jim Bruner lived?
A. No, sir; I don't believe I do.
Q. (Showing witness map, and witness designates where he lives, and same is shown to jury). Do you know a man by the name of Bruner, a colored man, that lives there?
A. No, sir.
Q. You say there are trails through there?
A. Yes, sir.
108 Q. And there is a trail that leads from Martin's to the Rabbit house?
A. Yes, sir.
Q. Did you count the shots that were fired?
A. No, sir.
Q. You don't know definitely how many there were?
A. No, sir.
Q. It was a very common thing to hear shooting up there?
A. Yes, sir; every day.
Q. You were sitting at James' when you heard the shooting?

A. Yes, sir.
Q. You didn't count them?
A. No, sir.
Q. They fired along close together, the reports of shotguns, apparently?
A. Yes, sir; sounded like a large gun.
Q. Sounded like a shotgun?
A. Yes, sir.

Redirect:

Col. CLAYTON. Mr. Guffy, what kind of a gun did you say you were carrying?
A. I was carrying a rifle and shot-gun combined.
Q. Did Underwood have a gun?
A. No, sir; he didn't.
Q. You carried your gun home with you?
A. Yes, sir.
Q. When these guns were fired, were there any remarks made?
A. Yes, sir.
Q. What did you say?
A. I said, "Mr. James, somebody was running up a deer down at the corner?"
Col. CRAVENS. At the corner. Is that at the east side?
A. Yes, sir.

J. W. JAMES.

Col. CLAYTON. Mr. James, your names if J. W. James?
A. Yes, sir.
Q. Where do you live?
A. I live up in the Creek Nation.
109 Q. Do you live at the same place that you lived at the time that Steadman is said to have been kilied?
A. No, sir.
Q. Where did you live at that time?
A. I lived on Lipscomb's farm.
Q. In what direction did you live from where this body was found, if you know?
A. It was a little northwest; it was pretty near north, and a little west of north.
Q. How far?
A. About a mile.
Col. CRAVENS. You lived about a mile from where?
A. From where this fellow was found.
Col. CLAYTON. Now, Mr. James, on the day that Steadman is said to have been killed, or on the day he was missing, please state if you were at home?
A. I was at home when the shooting went off.
Q. Who was there?
A. My folks, and Mr. Guffy, and Miss Tennessee, and Miss Martin.
Q. Please state if Underwood——
A. Yes, sir; he was, but I forgot him.
Q. Please state if you heard shots fired?

A. Yes, sir; I heard shooting; I don't know how many times, but it must have been six or seven or eight; fired for a right smart time.

Q. What direction was it?

A. It was nearly across where this body was found.

Q. What time of day was it?

A. It was just a fraction after five o'clock; I don't know the minute, but I know Guffy had his watch there, and he took it out, and said it was five o'clock, and we had spoken but a few words until the shooting took place.

110 Q. The shooting took place a short time after five?

A. Yes, sir.

Q. How long after that did Guffy and Underwood stay at your house?

A. I couldn't tell the time; I never paid any attention to it, but it was somewhere about a quarter of an hour; maybe half an hour; I don't recollect.

Q. Did you remain at home that evening?

A. Yes, sir; I was at home until they started off, and then I started down to Mr. Martin's; I wanted to talk to him, and I got outside, and the old lady spoke to me not to go off, and said I had to get some stove wood, and I had started down to Martin's on some business, and I seen if I went I would be after dark getting the stove wood.

Q. How far did Martin live from you?

A. 150 yards.

Q. It is in sight of you?

A. Yes, sir.

Q. Please state if after that you saw this defendant?

A. Well, I went down to Mr. Glidwell's——

Q. Answer yes or no?

A. I saw him afterwards.

Q. When?

A. It was Sunday week, I think, as well as I recollect.

Q. Where?

A. It was down where Jim Bruner lives, at his house.

Q. That is where he was camped?

A. Yes, sir.

Q. He was at his house that day. Had the body been found at that time?

A. No, sir.

Q. Did you have any talk with him about his partner being missing?

A. Yes, sir; I was going to say that me and Glidwell went down there, and he wanted us both to go on, and he said he had had a chill the day before, and he was taking medicine, and he said Bruner's folks had all gone off, and he was lonesome, and we walked in with him, and we

111 was setting there, talking, and he was talking about his partner being gone, and he said he was satisfied he was killed; he said the report was that he had gone off with this woman, but he was satisfied he had killed himself, and I said if he was gone with that woman, you don't have much idea whether he is killed or not, and he says, "I know he is killed," and I says, "You don't know any such thing." I says, "If he has gone off with this woman, he will have a good time, and when he gets tired he will come back," and he says, "I know he is killed."

Q. Did he say anything about where he last seen him?

A. He told me he had got over Meagher's fence, to go through the field to kill a deer, and he told him his horse had got loose, and for him to follow up the horse, and he would go through the field to kill a deer, or try to kill one.

Q. He told you on the day that Steadman was missing he had gotten over into Meagher's pasture?

A. Yes, sir; he told him to go on with his horse and he would go through the field and try to kill a deer.

Q. Now, then, Mr. James, on the day that the body was found, did you see the defendant?

A. Yes, sir.

Q. Where did you see him, and who was he with?

A. Well, there was Johnson and Glidwell and Charley's uncle; I don't know his name; and two of Charley's boys was there.

Q. That was the day the body was buried?

A. Yes, sir; and they come right in from where they had been burying the man, and Johnson told him they had just buried a man, and I asked him (defendant) where it was that he had seen him go over into
112 the field, and he went up about 40 or 50 yards, and he says "right at that corner; somewheres about there."

Q. What corner?

A. It is the northeast corner.

Q. He said he got over that corner and went down through the field to kill a deer?

A. Yes, sir.

Q. That is a very good country for game?

A. Yes, sir.

Cross-examination:

Col. CRAVENS. Who came to your house with Guffy?

A. Bood Underwood.

Q. Jim Underwood always went by the name of Bood; and they went off together?

A. Yes, sir.

Q. And, after they had gone 'while, you walked down with the ladies; you thought you would go up there and talk with Martin?

A. No, sir.

Q. Did you not go down with Mrs. Martin?

A. No, sir.

Q. Had they gone before you did?

A. I don't recollect; I think they were; I went with Guffy and Underwood.

Q. Had the ladies gone at that time?

A. I think so; but I could not be certain about it.

Q. You don't know which left first, the women or the men?

A. No, sir; but I think the women did; I am pretty near satisfied they did.

Q. You went to chat with your neighbor Martin?

A. Yes, sir.

Q. How far did he live from you?

A. About 150 yards; maybe farther; and maybe not so far.

Q. And you first started out, and thought you would go to your
113 neighbor's and talk a little with him, but you discovered it was too late to go and talk with him, and you were afraid you would forget to get your stovewood. Are you very forgetful?

A. Yes, sir.

Q. You are a tolerable old man?

A. Yes, sir.

Q. You can't remember which left first. Were they good looking women?

A. They looked well enough.

Q. You can't remember whether they left before Guffy and this other fellow?

A. No, I wasn't paying particular attention to the women.

Q. You have still got them in your head?

A. Yes, sir; anyhow, I like the looks of good-looking women.

Q. But you think the women were gone?

A. Yes, sir; I think so.

Q. How far did you go with Guffy and Underwood?

A. Somewhere by Martin's house; I don't recollect exactly how many steps, somewhere about the house.

Q. Then you concluded it was too late, and you turned around and went back home?

A. Yes, sir.

Q. Where did you go then?

A. Went back home and got the wood.

Q. What time of day was that?

A. Mighty near dark.

Q. What time was it when you went in the house?

A I couldn't tell exactly, on account of—it was getting nearly dark though.

Q. Did you look at the clock?

A. Our clock wasn't running.

Q. You are certain of that, are you?

A. Well, it may have been running, but there was no certain about it, without the old lady set it by that watch; I know it hadn't been keeping regular time for some time, and I didn't look at the clock.

114 Q. You don't know whether the clock was running or not?

A. No, sir.

Q. What makes you say anything about the watch?

A. Because Guffy took it out and spoke about it being just five o'clock, or it appears to me the old lady wanted to know what time it was so she could set the clock by it.

Q. You and Guffy have been talking about the watch since?

A. I don't know whether we have or not; we may.

Q. Don't you know you have since you have been here?

A. I don't know we have talked point blank—I named to Guffy and others, too, about the watch.

Q. If you thought the clock was set by the watch, and you thought the old woman called him in so she could set the clock, why do you say the clock was not running?

A. I don't know whether it was or not.

Q. You stated you did not think it was running.
A. I don't say——
Q. Did you look at the clock when you went in the house?
A. I don't know.
Q. Did you not say awhile ago the clock was not running regular?
A. I know it hadn't been.
Q. Was it running the next day?
A. I couldn't tell you.
Q. The next day?
A. I couldn't tell you.
Q. The next Sunday?
A. I don't know.
A. Has it ever run since?
A. It has run a little while at a time.
115 Q. How long at a time?
A. I couldn't tell you; I wasn't managing about it.
Q. How long had you had the old clock?
A. About six years.
Q. How long before that had it been running?
A. It run a little all the time until after we got to moving; it got sorter racked up when we commenced moving. When we got into that country there got something wrong with it.
Q. When did you get into that country?
A. Last April, the first of it, was a year ago.
Q. Where did you go?
A. To Webber's Falls.
Q. Where did you come to Webber's Falls from?
A. The Choctaw Nation, close to the Sugar Loaf mountain.
Q. How long did you live there?
A. Pretty near nine years in the nation.
Q. Are you a Choctaw?
A. No, sir.
Q. Was your son, James, a Choctaw?
A. No; I reckon not.
Q. Your son, a witness here, he is not an Indian?
A. I don't know but he is part Indian; but I don't know for certain.
Q. He didn't get any Indian from you?
A. I said I wasn't a Choctaw, but there is Indian besides Choctaw; I am part Cherokee, I reckon.
Q. Are you a Catawba Indian?
A. I am part Cherokee.
Q. You have to get a permit to live up there?
A. Yes, sir.
Q. Do they require Cherokees to have permits?
A. They do if they have no rights.
Q. You have to have a permit in the Cherokee Nation to live there?
A. Yes, sir.
116 Q. You went from the Cherokee Nation to Webber's Falls?
A. Yes, sir.
Q. That was last April a year ago?
A. No; I staid up there from one fall until next spring before I went to the Creek Nation.

Q. You staid at Webber's Falls about a year?
A. Yes, sir.
Q. Then you had been in the Creek Nation how long?
A. From the first of last April until I started from there to come down here; that is, I came close to Muskogee, four miles of it.
Q. Where did you live before you went to the Choctaw Nation?
A. The northeast portion of this State—Arkansas.
Q. What county?
A. Randolph County.
Q. How near to Pochahontas?
A. Nine miles of it.
Q. How long did you live there?
A. Raised there.
Q. Born there?
A. No, sir; I was born in Tennessee; Smith County.
Q. How far from Carthage?
A. I couldn't tell; my father left there when I was three years old.
Q. You claim to be a Cherokee, but you never lived there until the last year or two?
A. Yes, sir.
Q. Alexander told you his partner got over the fence into the Meagher's field pasture to go through to kill a deer?
A. Yes, sir.
Q. Then when you saw Alexander after the remains were buried, after Alexander said they were buried, he pointed back to the northeast corner, and said he got in there?
A. Yes, sir.
Q. Do you know where Dave Marshal lives?
A. I know close about it.
117 Q. That strikes the Meagher's farm near the northeast corner, don't it?
A. Well, there is a road goes from there.
Q. Your son and Underwood at that time lived up at the northeast corner of Meagher's farm?
A. Yes, sir; my son-in-law lived in the Rabbit house.
Q. How long did he live there after this man disappeared?
A. He went to Missouri.
Q. Didn't he leave the next morning to go to Missouri?
A. Yes, sir.
Q. Didn't your son-in-law leave from that tent at the Rabbit house next day with his wife?
A. I expect they did; but I could not tell; I wasn't there next day; I went to Muskogee.
Q. Where was your son when you came back?
A. At my house.
Q. How long were you in Muskogee?
A. Two days.
Q. When you went off, you left your son at the Rabbit house?
A. Yes, sir.
Q. When you came back, he was at your house?
A. Yes, sir.

Q. So he must have left the Rabbit house the next day after the man disappeared, or the second day?

A. Yes, sir.

Q. Didn't your son move over to your house before you went to Muskogee?

A. No, sir.

Q. Where was your wife when you went to Muskogee?

A. She was down at the tent.

Q. When did she go down there?

A. Sometime in the night.

Q. What night?

118 A. Monday night; she took down sick, and my son came after the old lady.

Q. Your son was married to his present wife at that time?

A. Yes, sir; he was married before that a good while.

Col. CLAYTON. Your daughter was confined a couple of days after that?

A. Yes, sir.

Q. Had a baby?

A. Yes, sir.

Q. That is what took the mother down there?

A. Yes, sir.

Q. And that is what brought her up to your house to be confined?

A. Yes, sir.

Q. And they brought her there to be confined, and she was confined on the 24th?

A. Yes, sir; I think that was about the time.

Q. Do you know what part of Missouri Underwood went to?

A. I know pretty near.

Q. Where was he going?

A. He was going back where he was raised to get some pay was coming to him.

Q. Where was that?

A. In Arkansas, Fulton County, I reckon; but he got off at a station, I forget the name of the depot; I have got it on a piece of paper.

Q. You were not there?

A. No, sir; but I saw him when he got his ticket to go to that depot; the depot is in Missouri, close to the line.

Q Close to the Arkansas line?

A. Yes, sir.

Col. CRAVENS. Your son's wife was not confined before you came back from Muskogee?

A. She had been pretty bad off each night while we were gone,

119 and the night before I started off, and the night before I got back.

Q. Did she have the baby before you got back?

A. No, sir.

JAMES BRUNER.

Col. CLAYTON (to the court). I will introduce this almanac in evidence (reading). "On October, 1889, on the 21st day, Monday, on that day, in the latitude of the Southern States, the sun set at 5.20 minutes and in the latitude of the Middle and Western States it set at 5.11 minutes."

Q (to witness). State your name.
A. Jim Bruner.
Q. Where do you live?
A. In the Creek Nation.
Q. How far do you live from Choska?
A. About one-fourth of a mile.
Q. From the store?
A. Yes, sir.
Q. Do you know where Gentry lives?
A. Right on his place.
Q (showing map). Now, what direction do you live from Scott Gentry; from the storehouse; do you know where Scott Gentry lives?
A. He lives right above me; I live right off east from it.
Q. East, or south?
A. South from it, I reckon.
Q. You live on his place, and near where he lives?
A. Yes, sir.
Q. Do you know Alexander, the defendant here?
A. Yes, sir.
Q. Did you know Steadman?
A. Yes, sir.
Q. Where did you first see those men?
A. One evening; I picked cotton until nearly an hour by sun,
120 and I went to Lipscomb's store to gĕt some shot, and I staid at the store until the moon ris; I came back, then, home, and I told the boy I was going out coon hunting to-night; I went out in the bottom until I struck the prairie, and in coming back homeI saw a white thing in the road. I says, "what is that in the road?" The boy said it is two white men going to camp. I went there, and both were laying together on a pallet in the wagon.
Q. Who were they?
A. Alexander and Steadman.
Q. Did you speak to them that night?
A. No, sir; I went home.
Q. Next morning did you see them?
A. Next morning Steadman some to the house to buy corn to feed his horses. I got him three or four bushels of corn.
Q. How much did he pay you for it?
A. 30 cents.
Q. Did he get any more corn from you at any time?
A. Yes, sir.
Q. How much?
A. He bought four bushel; he didn't pay me for the corn; so they came to buy beef, and they didn't have any money, and I told them to go to the store.
Q. Did they come there to camp at your place?
A. Yes, sir; they did.
Q. How long did they stay there before Mr. Steadman was missing?
A. They came there Thursday night, and Friday morning Mr. Steadman come and bought corn, and went back to his wagon, and immediately come right back and said, "Mr. Bruner, I want to borrow a gun for my partner to hunt with."

Q. How long did they stay at your place before Steadman was missing?
A. Friday, Saturday, and Sunday; three days.
Q. Is that all they were there?
A. Just three days.
121 Q. They came there Thursday night?
A. Yes, sir.
Q. It was Friday morning Mr. Steadman borrowed the gun?
A. Yes, sir; he said, "I want to borrow your gun." I said, "The right-hand barrel ain't so good, but the left-hand barrel in good fix." He took it down and examined it and laid it back until he got ready for it; then he came and carried it out to his wagon. I guess they loaded it down there. I went to pick cotton. That evening about an hour by sun both men came in. He brung the gun and turned it back to me that night, Mr. Steadman did.
Q. Where did they sleep that night?
A. Out at the wagon. Saturday morning he comes in and borrowed the gun again for his partner to hunt with again. I told him there it was in the rack; he takes it down and carries it out to hunt all day Saturday, and him and Mr. Alexander came in together with a chill on him, and he called me down to the wagon and talked awhile. So I went back to the house. Next morning, Sunday morning, they both come to the house, talking with me and laughing and joking.
Q. You saw them there on Sunday. Did they hunt again on Sunday?
A. No, sir; they went fishing on Sunday.
Q. Monday what did they do?
A. Sunday night they sat a good little while, and talked pretty late.
Q. Where did they sleep Sunday night?
A. Out at the wagon. Monday morning, then, I was fixing to start to the field, and Mr. Alexander he comes in the house and commenced loading his pistol. He didn't say anything to me at the time. He got it on his knees, and was loading his pistol.
Q. What kind of a pistol was it?
A. Cap and ball pistol. He loaded four barrels of his pistol and he said, "Mr. Bruner, have you got shot the size of this?" I said,
122 "I don't know." I reached up and got my sack down and handed him the sack; and he took one shot out of the sack, and took one of his shot and put them both in his hand, and rolled them both together. He says, "I guess I got to load with mine to-day," and he handed it back. He said, "I want to borrow your gun.' I said, "All right."
Q. Did he load the pistol all around?
A. Yes, sir.
Q. What did he do with his pistol?
A. Stuck it down here. (The witness indicates in waistband of pants.) He got done loading, and I stepped out behind him; I think I went out to the well. He was about half way to the corner, and went on behind, loping. I didn't see any more of him that day until night.
Q. Where was Mr. Steadman?
A. He was some 100 yards ahead of him, and he followed on behind, loping.
Q. Was Mr. Steadman going in a lope?
A. He was riding along slow.

Q. And that was the last you saw of them that day?
A. Yes, sir.
Q. That was Monday?
A. Yes, sir.
Q. What road were they going on then—were they going the road that would lead to Lipscomb's store or the opposite direction?
A. I couldn't tell you; after they got to the timber, I couldn't see them any more.
Q. What were you doing that day?
A. Picking cotton.
Q. At noon did you see them?
A. No, sir.
Q. When did you next see them?
A. After dark Alexander comes in. I was about an hour or hour and a half. He got in. It was sorter pretty cold that evening, and he squatted down with his hands that way, by the fire. I got up and handed him my chair. We asked him to have supper. He said he didn't want no supper.
Q. Where did he sleep that night?
123 A. In a little side room to the house.
Q. Had he ever slept there before?
A. No, sir.
Q. Had Mr. Steadman ever slept in your house?
A. No, sir.
Q. He slept in your side room that night, in your house?
A. Yes, sir.
Q. Where did you sleep?
A. I was in one room and him in the side room.
Q. You say he did not eat supper?
A. No, sir.
Q. Did you hear him in the night, or see him?
A. When I waked up in the night I heard a mighty rustling in the room loke tearing the boards off the house, and he said, "Dave, is ye coming; Dave is ye coming?" Mr. Alexander was talking that way half an hour. I said to Caroline, "I believe Mr. Steadman is come. I heard him say it."
Q. When he came to your house that night, did he tell you anything about Steadman?
A. No, sir.
Q. He did not mention where he was?
A. No, sir; not until I ask him.
Q. What did you ask him?
A. I asked him next morning——
Q. You did not ask him anything about it that night?
A. No, sir.
Q. And he did not tell you?
A. No, sir; next morning I said, "Mr. Steadman ain't come in yet." He said, "No." I said, "I guess he got lost on the ridge and the horse got away." He said, "I brought the horse in last night." I says, "That seems mighty strange, if you brings the horses." I says, "You better hunt that white man up." He says, "I am going to hunt him up." Tuesday morning he struck out pretty soon.
Q. He told you he brought his horse home on Tuesday morning?

124 A. Yes, sir.

Q. Did he tell you anything about where he brought the horse from, or where he left Mr. Steadman?

A. No, sir; until I asked him.

Q. Did he tell you where he left Steadman. I don't care whether you asked him or not?

A. Yes, sir; next morning I said, "What side you come in here?" He said he come around on the west corner—no the east corner, and went plum to the southeast corner, and went from there to the west corner and then comes back to where he was to meet his partner at, at the north corner at Lipscomb's store, where you showed me on that paper.

Q. (Showing map.) And there is where he was to meet him, up at that corner?

A. Yes, sir; that is what he said.

Q. When did he tell you that?

A. Tuesday morning.

Q. I understand, according to his statement, his partner was going around that field and meet him up there.

A. Yes, sir.

Q. He told you he was going to hunt his parter after you told him he better hunt him up?

A. Yes, sir.

Q. Did he go off?

A. Yes, sir, he go.

Q. When did you see him again?

A. Dark. He come back Tuesday night about dark. I said, "Heard of Mr. Steadman." He said, "No." I said, "What do you think about it?" He said, "I think he killed himself." "What makes you think that?" He says, "It runs into me that he thinks he killed himself."

Q. Was anything more said about it that evening?

A. Next morning I said, "What are you going to do about Mr. Steadman?" He said he don't know. I said, "You better hunt for him again to day.

Q. That was Wednesday?

A. Wednesday morning. And he struck out and hunt till about
125 three o'clock. He come in and brought in half a beef with him and hung it up in the room. I come out the cotton patch.

Q. I don't care about that. He brought the beef in there and cooked come of it?

A. Yes, sir.

Q. Did you have any more talk with him about Steadman?

A. Not any more at that time. So he told me he wanted me to put him on the Verdigris on Monday, and I followed him on the Verdigris to a man by the name of Colbert. I says, "I don't know whether I have time to go with you or not; I am gathering corn." He kept on forcing me to go. He kept putting me off. So I got the corn gathered Monday evening. Monday he got at me again. I told him I guess I could follow him. So Wednesday morning we struck out to the Verdigris. About 40 or 30 steps from the road——

Col. CLAYTON. It was Thursday morning, I reckon, he asked you to go with him over to the Verdigris?

A. It was Tuesday. We rode side and side.

Q. What road were you on when you saw the buzzards?

A. On the north side of Meagher's field.

Q. Do you know where the body was found afterwards?

A. No, sir.

Q. Has it ever been pointed out to you afterwards?

A. No, sir.

Q. How far from the Rabbit House was it?

A. I don't know how far. I saw the buzzards fly up and sail around. I said, "The buzzards eat on a cow or dead deer, one." I seed him, Alexander, he didn't turn his head. We went on the Verdigris and back the same road and come by the same buzzards again and made de same remarks again, and he didn't notice it. We goes home. I said to Caroline, "I don't like the way Alexander travels."

Q. You did not say that in Alexander's presence, I reckon?

A. No, sir; we come back that evening, and says I, "What you
126 going to do about your partner now." That was on Thursday. "I guess I just give it up," I says, "If I was you, I would go to the commissioner at Muskogee and make report of it." He said there wasn't any need of it. I said, "If you didn't the United States courts will show you better than that." He said, "I believe I will," and did. He started then. William Perryman sent a note. So when the note come I was gone down to mother's.

Q. Could you read the note?

A. No, sir. When I come back I was pretty wet. He come and said he, "He heard from my partner." He said, "By to-morrow; I will tell you better by to-morrow."

Q. That was the night the note come?

A. Yes, sir; and sure enough, next morning I got up pretty soon and went out.

Q. What time did that note come to you from Perryman; was it the evening of the day you saw the buzzards that the note came?

A. The day the note came it was raining, and the day we went on the Verdigris it wasn't raining.

Q. Did you see the note?

A. No, sir; I was down at mother's.

Q. He told you he got this from Perryman?

A. Yes, sir; he told me himself.

Q. That he had heard from his partner?

A. Yes, sir; and I laughed and says, "Is you?"

Q. As though he was alive?

A. Yes, sir.

Q. When you laughed and says, "Is you," what did he say to that?

A. When I got in he said, "I heard from my partner." I says, "Where at?" He said, "Right down below here, down in the settlement, down on the river." And so I said over to myself; I didn't say anything to him. I thought myself that wasn't right. Next morning he went out to meet Perryman to where the man was found. He didn't say any-
127 thing to me about it, and he talked with them; he passed on by me, and told the balance of them. So they all went where the man was found and buried him.

Q. That was next morning?

A. Yes, sir.

Q. Did you know that a man by the name of Card had gone to Perryman's with him that evening?

A. No, sir; not for three or four days after.

Q. The next day they went to the body; you did not go?

A. No, sir.

Q. How long after that was it until Alexander was arrested?

A. It was after they put the body away and found it. I don't know if I remember it. I don't want to make a mistake. I don't know whether they buried him or not. He made remarks to me; I said, "What you done with him." He said, "Done nothing." I think I said, "You better put the body away." I think he said, "No." I said, "You better go to the United States and make a report." He said he would go, and the ferryman had come to Lipscomb's and he couldn't get across that day. I thought he had gone across. He didn't go. Next morning I said—he didn't come in until way late the night before, and I said, "Did you go across the river?" "No, sir, the ferryman was gone from the ferry." Friday morning he pulled out for Muskogee. He wanted me to feed his horses while he was gone; I told him "all right." So I attended his horses for him, and so Saturday I saw four men coming along the fence road. I didn't think Alexander was with them, and a gentleman says, "The marshal wants to see you a minute." I told him all right; to wait till I put the mules up in the stable and I would come and see him. I went and had a talk with him.

Q. Was Alexander arrested?

A. Yes, sir.

Q. Those men that came up there had him under arrest?

A. Yes, sir; it surprised me to see him arrested; they called me out.

128 Q. Who called you?

A. Mr. Gentry, to the fence, and had a talk with me; I went out and talked awhile.

Q. Who said that? Who was talking to you?

A. Mr. Gentry, he said, "The marshal wants to see you while."

Q. You went out to where Alexander was. Now, if you had any talk with Alexander, you can tell that.

A. Heck Thomas called me off to one side, and said——

Q. Never mind what he said to you. Did you see Alexander?

A. Yes, sir; they had him a prisoner; Alexander was standing on this side of the wagon, and I was standing about seven or eight feet from him; he had his back to the wagon, this way, like, facing me, and he said, "Bruner, I have treated you mighty well since I have been here; not to give me away on anything." I said: "I have got nothing to give you away away for." Then they took him off after that.

Q. How long have you lived up there in the Indian country?

A. Nine years.

Q. Where did you come from up there?

A. Miller County, Arkansas.

Cross-examination.

Col. CRAVENS. You were raised in Miller County?

A. I was raised and born in the Creek Nation; I sold out before the war.

Q. How old were you then?

A. I don't know; I went off in my shirt tail.

Q. How long did you live in Miller County?

A. 24 or 5 years, and then next across Red River, and then back from one farm to the next.

Q. When did you go back to the Creek Nation?

A. Nine years ago this gone spring.

Q. You have been living up there ever since?

A. Yes, sir.

129 Q. Are you a married man?

A. Yes, sir.

Q. Who is your wife?

A. I have got two or three wives.

Q. How many have you got now?

A. Ain't got none now; they quit me and I married another one; when they quit me I go and hunt another one.

Q. Who did you first marry?

A. I didn't marry none in the Creek Nation.

Q. Did you have a wife when you went up there?

A. No, sir; I went up by myself.

Q. Who was the first wife you had after you went up in the Creek Nation?

A. I didn't have any.

Q. When you went to the Creek Nation nine years ago?

A. A woman; her name is Lucinda.

Q. Where is she?

A. I don't know; I couldn't tell you from now till Christmas.

Q. Who is the next one you had?

A. I had some three or four in this State after that.

Q. After you left the Creek Nation you came in the State?

A. I was in the State awhile.

Q. You went nine years ago to the Creek Nation, and then you went back to Miller County?

A. Yes, sir.

Q. And have you a wife at both places?

A. No, sir.

Q. Have you any anywhere?

A. I had one; she quit me for another fellow, so I went on the Gentry place myself.

Q. Were you married in Miller County before you went there?

A. Never was married like they call it. Blanket fashion, and we had to take it as they give it to us; didn't marry; man wanted a wife, take her, and go with her.

Col. CLAYTON. Like you did in slave time?

A. Yes, sir.

130 Col. CRAVENS. Did you have one in Arkansas before you went up there in the nation?

A. I did have one, she died; I got another, and she run off and left me.

Q. When you went up from Arkansas to the Creek Nation the first time how long did you stay in the Creek Nation?

A. About a year or a year and a half, maybe.

Q. Then you came back to Miller County?

A. Yes, sir.

Q. How long did you stay there?

A. Six or seven months.

Q. Then you went back to the nation?

A. Yes, sir.

Q. How long did you stay up there then?

A. Up there until now.

Q. You only went back once?

A. Yes, sir.

Q. How many women have you had since you had Lucinda?

A. Didn't have but one.

Q. How many did you have before her?

A. I couldn't tell you; before her I had a good many.

Q. Who is your wife now?

A. I ain't got none.

Q. Ain't Caroline your wife?

A. No, sir; just had her hired to pick cotton last fall.

Q. You are staying with her here, ain't you?

A. No, sir.

Q. Ain't you sleeping with her here?

A. No, sir.

Q. What woman was with you when Mr. Steadman and Alexander came there?

A. Caroline.

Q. Ain't she the one you have been talking about this morning as your wife?

A. I didn't say she was my wife.

Q. She was there at the time?

A. Yes, sir.

Q. And she is here?

A. Yes, sir.

Q. She was there at the time those men came there, and was there all the time they staid there?

A. Yes, sir.

131 Q. What day did they come there, those young men?

A. Thursday evening; I guess about dark; I wasn't there when they came.

Q. And when did Steadman disappear?

A. Monday.

Q. The next Monday?

A. Yes, sir.

Q. They came Thursday night, then they staid Friday night, Saturday night, and Sunday night?

A. Yes, sir.

Q. They staid there four nights?

A. Yes, sir.

Q. They went off on Monday, and Mr. Steadman did not come back?
A. Yes, sir.
Q. Where did they sleep while you were there?
A. Out at the wagon together.
Q. Were they friendly?
A. Yes, sir; they were friendly to me.
Q. Didn't they appear to be friends to one another?
A. Yes, sir.
Q. They appeared to be attached to one another.
A. Yes, sir.
Q. I will ask you if Mr. Alexander did not appear to be distressed when he found out Mr. Steadman was gone?
A. He was hunting him.
Q. Did he appear to be sorry?
A. He said: "Sorry about his partner being gone."
Q. He wanted you to go and help to hunt him?
A. He didn't ask me to go ahead and hunt him.
Q. Didn't he ask you to go one day when you couldn't go?
A. That is when we go on the Verdigris.
Q. Before that didn't he ask you to go and you couldn't go; that was Monday?
A. I didn't go that day; no, sir.
Q. But afterwards he did get you to go with him one day?
A. Yes, sir.
Q. And you went up on the Verdigris?
A. Yes, sir.
Q. And you rode around all day pretty much?
A. Yes, sir.
132 Q. And came back together?
A. Yes, sir.
Q. And he was inquiring about him?
A. Yes, sir.
Q. And described the man when he saw people?
A. Yes, sir; he described him to William Perryman and Joe——
Q. Did Mr. Steadman tell you they were partners in the gun?
A. Yes, sir.
Q. And partners in the horses?
A. He didn't say anything about the horses. When he came in the house that morning——
Q. When was that?
A. I believe Sunday morning, if I ain't mistaken.
Q. Who was that?
A. Mr. Steadman; says he, "The gun belongs to me and partner, between us." He said he give a two-year old colt for it. I said then that left me out a gun. And nobody didn't speak, and Mr. Alexander didn't say no answer, so that stopped the gun trade.
Q. How were the horses branded?
A. I don't know, sir.
Q. You did not see the brands on them?
A. Yes, sir; I didn't notice what it was.
Q. Who bought the first corn?

A. Friday morning Mr. Steadman come from behind the house at the back door, and Caroline says, "Here is a white man." I opened the door and went on through and I looked and saw Alexander at the well. I says, "Where is the white man?" Caroline says, "Yonder at the well." I says, "You don't call him a white man, does ye?" She says, "I call him a white man." I says, "You must be blind; that's a yaller nigger." Mr. Steadman come and bought the first corn; was about three bushel', if I ain't mistaken. The next corn then was bought; a man come wid some beef one day and Mr. Steadman had just gone to Lipscomb's store. I said,

"I go up to the store and tell Mr. Steadman to loan me $1.25,"
133 and she went and brought it. I says, "Who sent it?" She says, "That white man who got the corn." Alexander carried it.

Q. When did he get that?

A. Along in the evening.

Q. What day?

A. I couldn't tell you?

Q. How many bushels did they get the first evening?

A. A. I think three bushels.

Q. Mr. Steadman?

A. Yes, sir.

Q. Mr. Alexander carried the next?

A. Yes, sir.

Q. How many times did they get corn?

A. After he sent the $1.25 I goes up and measured eight bushels, and if Alexander come and got it I didn't see him, and Mr. Steadman I didn't see him, and when I come the corn was all gone to the wagon.

Q. Who paid you for that?

A. Mr. Steadman.

Q. Is that all the corn they got?

A. Yes, sir.

Q. When did they get the eight bushel'?

A. They got the first on Friday morning.

Q. When did they get the next that Alexander carried?

A. Saturday evening *or* or Sunday evening.

Q. When did they get the next eight bushels?

A. The last trip he carried it, I think, Sunday evening.

Q. You think they got it on Sunday evening, since you have studied about it?

A. Yes, sir.

Q. Then the next they got was eight bushels?

A. Yes, sir.

Q. When was that taken off?

A. It wasn't taken off.

Q. Where did you measure it up?

A. Behind the house.

Q. When was it taken away from there?

A. The eight bushels of corn was put in there either Sunday evening or Monday morning, soon.

Q. They only took three bushels Sunday evening?

A. Mr. Steadman told me, "I want to feed off the colts this
134 evening and get me up a lot of corn."

Q. They got three bushels Sunday evening?
A. Yes, sir.
Q. When did they get the eight bushels?
A. It must have been Monday evening; I piled it up there.
Q. That was after Mr. Steadman was gone?
A. Yes, sir; he was gone, I guess.
Q. Now, then, the eight bushels was carried away after Mr. Steadman was away?
A. Yes, sir.
Q. Who paid youn for that?
A. He paid me a dollar and a quarter on it.
Q. When was that?
A. I couldn't tell you.
Q. You did not borrow it on Monday, did you?
A. No; of course not.
Q. You did not borrow it on Sunday; he was not at the store on Sunday?
A. No, sir.
Q. Then you got the $1.25 before they got the three bushels; how much did the three bushels come to?
A. I couldn't tell you.
Q. How much a bushel?
A. 30 cents.
Q. How much did he pay you for the first corn he got?
A. He paid that in money.
Q. How much did he pay you for the first lot of corn?
A. I have to count it up first.
Q. Don't you recollect?
A. If it was two bits I could easy get at it; that would be 75 cents, but you see it is 30 cents.
Q. How much?
A. I didn't get no great thing.
Q. Did you get more than a dollar or less than a dollar?
A. About $1.25, I reckon; I couldn't tell.
Q. Then the next day you sent and borrowed $1.25 from him up at the store?
A. Yes, sir.
135 Q. After that, he got three bushels on Sunday evening.
A. Yes, sir.
Q. That is right, is it?
A. Yes, sir.
Q. Did he pay you any money when he got the three bushels on Sunday evening?
A. No, sir.
Q. That went on the $1.25 you borrowed from him?
A. Yes, sir.
Q. Then on Monday evening they got eight bushels?
A. Yes, sir.
Q. Who paid you for that?
A. When they arrested Mr. Alexander he gave me 50 cents. I charged him 30 cents and he found that corn was 25 cents at Lipscomb's store,

and he said he couldn't pay it, and I let him worry along until he was arrested, and I told the marshal he owed me something for corn, and for taking care of his horses.

Q. Did you get pay for it?

A. Yes, sir; the man arrested him paid me for it.

Q. Did Alexander pay you for any corn?

A. Only 50 cents; that is all I got out of his hand, and the balance I got out of the marshal's hand.

Q. You are certain that is all he ever paid you?

A. Yes, sir.

Q. You are satisfied that he was over there from Thursday until Monday; four nights?

A. Yes, sir.

Q. Then Mr. Steadman disappeared?

A. Yes, sir; they came there on Thursday night. I will give a man my neck on that.

Q. And Steadman left on Monday, and you will give your neck on that?

A. Yes, sir.

Q. They slept there four nights?

A. Yes, sir; I guess they did.

Q. Do you know Mr. Barnes here?

A. Yes, sir.

Q. You have seen Mr. Barnes and me up there?

A. Yes, sir.

Q. You told us all about what had taken place between Mr. Steadman and Alexander?

136 A. I think I told you some; I didn't tell you all of it; I didn't 'low to tell you all of it. I might have to tell you something wouldn't be to suit.

Q. After we had you subpœnaed?

A. I don't know who.

Q. You were subpœnaed for the defendant?

A. I don't know who.

Q. Was that after or before Mr. Barnes and I saw you?

A. Must have been after, I guess; I can't tell which.

Q. I will ask you if you did not tell us about Mr. Gladwell and other good witnesses for the defendant?

A. Gladwell said he would be a good witness for Alexander.

Q. Did you not tell us about other witnesses?

A. I told you about Gladwell.

Q. And show us where he lived?

A. Yes, sir.

Q. Didn't you tell us about Joe Crow?

A. You asked me if I knowed Joe Crow, and I told you yes, and showed you where he lived.

Q. When was it Mr. Alexander started for Muskogee, first, Jim, to make a report about this.

A. I can't tell you; I think Thursday, when he made the first start.

Q. Then Fr'day morning he started again.

A. Yes, sir.

Q. And the next day he came back, arrested?

A. Yes, sir.

Q. Did you and he have any talk after he came back, after he was arrested?

A. He said: "Bruner, you don't know nothing wrond about me." I said "No." He said: "You don't want to give me away." I said: "There is nothing to give you away for."

Q. That was when he was present, was it?

A. Yes, sir.

Q. Heck Thomas and his guard were there with him then?

A. Yes, sir; but they were on the opposite side of the wagon.

Q. You have not told us yet about taking the satchel away
137 from the wagon; tell us about that?

A. The first evening he started across the river, I think it was raining, drizzling; raining all day. I was wet, and set by the fire and dried. I saw it was getting pretty late. As I goes out, I saw two men come walking like they were going on by. I said to myself: "Yonder goes that man, looking for Steadman." I goes back in the house and set by the fire. He went up to the crib, like up to Lipscomb's store. I thought they were gone. I was going back out the door, and I saw these two men go along side of the wagon, and stood by the wagon, and raised the wagon sheet on the far side of the wagon, and took out a white sack, and I thought it was Alexander, so they went off with it, towards the river. After Alexander came, I never said nothing to him about anything being about his wagon. Next morning I never told him about it. Then he started for the sack, and he couldn't find it, and Alexander remarked when he went to Muskogee, he told "Watch the wagon for me." I said to Caroline I had nothing to do with the wagon.

Q. There were two men came to the wagon and took his sack off?

A. Yes, sir; I thought it was Alexander.

Q. You did not think it was Alexander when you saw the two men go walking up to the wagon?

A. Yes, sir.

Q. What made you say you thought it was somebody hunting that man Steadman?

A. I did say it; the reason I said that was after they stopped at the wagon.

Q. Did you think it was Alexander before they stopped at the wagon?

A. I don't know.

Q. When they were going towards the wagon, did you think it was Alexander?

A. I had an idea it was Alexander.

Q. How did you get the idea it was somebody hunting Mr. Steadman?

138 A. Because they didn't come around me.

Q. Hadn't there been crowds around that wagon every night since Steadman disappeared?

A. Yes, sir; two nights.

Q. And you thought it was that crowd came back to hunt that man?

A. I thought it was them.

Q. They had guns.

A. I never seen any.

Q. There were two of them.
A. Yes, sir.
Q. Were they riding or walking?
A. Walking.
Q. And you saw them take a little looking sack out of the wagon, and go towards the river with it?
A. Yes, sir.
Q. You say he came along afterwards on horseback?
A. Yes, sir.
Q. That same night? (No answer.)
(Adjourned till 1:30, p. m.)

139 JUNE 18TH, 1890, 1.40 p. m.

JIM BRUNER.

Continuation of cross-examination:

Col. CRAVENS. Bruner, how many nights did Alexander and Steadman sleep in the wagon bed?
A. Slept in there every night the whole time they staid there, until he was missing.
Q. Didn't they ask you to let them sleep in your stable, crib-barn, awhile, on account of the wet, rainy weather; didn't they get permission from you to sleep in the stable?
A. I believe they did.
Q. How many nights did they sleep in there?
A. I couldn't tell you; slept in there about one or two nights; I couldn't tell you.
Q. Tell us how it was, as near as you can.
A. I can't tell you what day it rained; I know they slept in there one or two nights.
Q. Saturday night or Sunday night?
A. I couldn't tell you.
Q. It must have been Saturday night or Sunday night?
A. I don't remember now.
Q. You think, then, that two nights before Steadman disappeared they did sleep in the stable?
A. Yes, sir; must a been.
Q. Did Alexander sleep in there any after his partner disappeared?
A. No, sir.
Q. Think about that now, Jim?
A. Well, I am tellin' you the honest fact; he didn't sleep in there.
Q. Where was you when he came, Monday night?
140 A. I was setting home by the fire; nearly time to go to bed; about an hour or an hour and a half after dark.
Q. Where did he tell you he had been?
A. I never asked him no questions.
Q. Where did he tell you Steadman was?
A. I never asked him no questions.
Q. Never asked him any questions about where Steadman was until the next morning?
A. No, sir.

Q. There wasn't any questions asked about him?

A. Caroline axed him, but I didn't.

Q. I will ask you if you don't remember that Alexander slept in the stable or in the crib that night, wherein he and Steadman had been sleeping, and the next day when he went out hunting for his partner, when he got back, didn't you tell him that they had been out that day, hunting around the stable for Steadman and that woman?

A. I didn't tell him that way.

Q. Didn't you have some talk with him?

A. But I didn't talk with him like you are telling it. When he came in late that night he set around the fire, and he turned around and turned around, and directly he said to Caroline, and asked her if that boy had watered the calf, and the boy told him he hadn't, and he said he had better water it, and while the boy goes and waters the calf, he goes out and brings in his bed clothes; he was afraid to go by himself, and while the boy was a watering the calf, he was bringing in his bed clothes.

Q. Where did the boy water the calf?

141 A. Outside of the fence in the lot.

Q. Where was the calf?

A. In the lot.

Q. Was the water in the lot?

A. No; the water was in the yard.

Q. Wasn't that the second night, Jim, that Steadman disappeared?

A. No, sir; it was the first night.

Q. Now, Jim, don't you remember that when he come in there he asked you if his partner had come in, the first thing?

A. Didn't ask me anything.

Q. Didn't he ask Caroline?

A. I couldn't say that; but when he came in he squatted down by the fire, and I got up and give him my chair, and went to bed, and him and Caroline was a settin' there a talkin', and I never heard a word that was said about his partner.

Q. You say, then, he didn't ask about his partner?

A. He didn't ask me, but I don't know what he axed Caroline.

Q. You left the ' sitting by the fire?

A. Yes, sir; I just pushed him my chair, and went to bed.

Q. He said he didn't want your chair?

A. Yes, sir.

Q. And then you went and laid down on the bed?

A. Yes, sir.

Q. Jim, you don't know Mr. Steadman, there [pointing to deceased's brother]?

A. No, sir; I don't know him.

Q. You have talked to him about this case?

A. No, sir.

Q. Didn't he tell you that he wanted you to tell that Alexander bought no corn, but that he wanted you to tell that his brother bought all the corn?

A. No; didn't say anything about that.

142 Q. What did he say?

A. He only axed me questions, just like you did.

Q. Didn't he talk to you any about the case?

A. He talked to me a little about it, and axed me what I thought about it, and I said I thought they was friendly.

Q. Since you have been here didn't you tell Gladwell—haven't you told Mr. Gladwell, or Mrs. Gladwell, that old lady—that they were just as friendly as you ever saw two men, and that you didn't believe this man had killed him?

A. When?

Q. Since you have been here?

A. No, sir.

Q. Didn't you tell Mr. Gladwell, since you have been here attending this court, that Steadman had talked to you and tried to get you to tell that his brother bought all the corn?

A. Since I have been here I never spoke a word to Mrs. Gladwell.

Q. No, Mr. Gladwell, the old lady's son?

A. I haven't seen her but once since I have been in Fort Smith?

Q. I am not talking about her; I am talking about Mr. Gladwell; you deny telling him that?

A. I never had a talk with him.

Q. You know that we had you subpœnaed as a witness here?

A. I don't know who subpœnaed me.

Q. We told you that we were going to have you subpœnaed?

A. Yes, sir.

Q. And you refused to come?

A. That was——

Q. Answer my question. Did you refuse to come here for us?

A. Yes, sir.

Q. You did refuse?

A. Yes, sir.

143 Q. Now, when you came here, I will ask you if you didn't go to Mr. Reed's office and have a conversation with him, in the presence of Mr. Gladwell and Mr. Terry?

A. Well, I had a few words with him.

Q. It is true?

A. I never gave him what I give you; I only spoke a few words to him about Alexander there.

Q. You were up in Mr. Reed's office when Mr. Gladwell and Mr. Terry were there?

A. Y's, sir.

Q. I will ask you if you didn't state there in that conversation that you heard Steadman and Alexander both state up there that they were partners in the horses?

A. I don't think I did; I might have made a statement in this way, that when both of the men was living there together they spoke about getting corn in partnership.

Q. I am talking about the horses.

A. Can't say anything about the horses.

Q. Didn't you state that you heard them say, over and over again, several times talk about them both owning the horses, and didn't you tell the same thing to Mr. Barnes and myself, about their being partners in the horses?

A. I don't think I did.

Q. And didn't you tell them in that conversation that Alexander sometimes paid for the corn?

A. I said he sometimes paid the money for the corn; he paid for it once or twice and Steadman did.

Q. I am asking you what he did; I know what you said. Didn't
144 you state there in that conversation in Mr. Reed's office and in the presence of Mr. Gladwell and Mr. Terry that sometimes Alexander paid for the corn and sometimes Steadman paid for the corn?

A. I don't know anything about that; I know he paid for the corn once.

Q. I will ask you if you said, in that conversation, that a day or two after that man was missing that you went out with your gun, and that you, yourself, passed right over this ground where the body was found, and that you knew you didn't go five steps from where the body was found, and that you knew there was no body there at that time?

A. When?

Q. That day. Didn't you state it that way to Mr. Reed, in his office, in the presence of Mr. Gladwell and Mr. Terry?

A. I don't remember about that.

Q. When was it you did go through there hunting?

A. I hunted through there in the night; didn't go through there hunting; I went through there in the night.

Q. How long after he was missing?

A. I couldn't tell you; I was hunting nearly every night; I said I hunted through there in the night, and, if it had been day time, I would have found the man.

Q. Didn't you say you took your gun and went right over that ground and there was no body there?

A. I went through there after night, and there was some hogs there, and the dogs scared them off, and the buzzards flew off.

Q. You was through there hunting and found buzzards?

A. Yes, sir; but I didn't think anything about it.

Q. Did you smell anything?

A. No, sir.

145 Q. When was that?

A. I couldn't tell you.

Q. How many different times did you go up past that road with Mr. Alexander, after that body was missing?

A. The first time was Sunday, and we went up past there, and he said he had gone around the south side of Meagher's field, and had waited for his partner about two or three hours, and then we went past where the body was found, and I saw them buzzards, and I never noticed them and I went on home.

Q. Now, did you tell over here that the first time you went out there you went over the ground in the day time, and then didn't you tell them that the first time you went along there you passed with Alexander, before Steadman was found, and you went out to hunt the body, and you went right along where the body was found, and there was no body there, and that you saw no buzzards there, and that the second time you passed along there you saw no buzzards——

A. No, sir.

Q. Let me finish. How was it?

A. Tuesday morning we started up on the Verdigris, and on the same road I saw these buzzards again, and made the remark about the buzzards.

Q. It was Tuesday morning when you went out, and you made a remark about the buzzards. What did he say?

A. He said nothing.

Q. Tuesday evening, coming back, you made a remark about the buzzards?

A. Yes, sir.

Q. What did you say?

A. I said the buzzards was eating the dead carcass of a deer.

Q. The first time you saw the buzzards was on what day?

146 A. Sunday.

Q. You said nothing at all then?

A. No, sir; I didn't notice them.

Q. Then you went out again Tuesday morning; did you notice them in the morning and evening?

A. Yes, sir; the reason I noticed them was they was so close it looked like it was the same place, and I just made that remark.

Q. Where have you been boarding since you have been here?

A. I board with Douglass Perryman.

Q. Here in town?

A. Yes, sir.

Q. Do you know Aunt Susan Hope, a fat, large colored woman?

A. I don't know her, sir.

Q. What! Don't know her?

A. Don't know her; no, sir.

Q. You know a large colored woman at that place?

A. Where at, you say?

Q. At the place where you are boarding; a large colored woman, darkey woman. Are you boarding now at the same place you were boarding?

A. No, sir; when Douglass he moved right away from there, and I stopped boarding with him.

Q. Where are you boarding now?

A. I am staying with an old colored lady; I don't know his name.

Q. Same place Caroline boards?

A. No, sir; his house is across the road.

Q. Don't you sleep at the same house Caroline does?

A. No, sir.

Q. What is her name?

A. Susan.

Q. You know her name?

A. I never asked him his name.

Q. Did you get dinner with her to-day?

A. Yes, sir.

147 Q. I will ask you if you haven't been trying to influence Caroline and get her to tell the same story you do?

A. No, sir.

Q. Didn't you go on with her so until Susan told you if you didn't quit teasing her she would call a policeman and have you arrested?

A. No, sir.

Q. Didn't you have Caroline crying because you were imposing on her and trying to make her tell the same story you did?

A. No, sir; you can call her up and ax her; I couldn't do that, it is not in my line of business.

Q. Where does Caroline board?

A. At that old ladies house; I don't know his name.

Q. Susan?

A. I don't know her name.

Q. Anyhow, she is boarding there. Don't you board there, too?

A. I did last week.

Q. Do you know the name of the woman you boarded with last week?

A. No; I don't know her name, honestly.

Q. It is a large colored woman?

A. Yes, sir; I know her.

Q. Don't know her name?

A. Yes, sir.

Q. You and Caroline both boarded there last week?

A. Yes, sir.

Q. Did she ever threaten to call the police on you?

A. No, sir.

Q. About your conduct towards Caroline?

A. No, sir.

Q. Now, Jim, don't you know that both Steadman and Alexander had money up there, and didn't you state in this conversation in Mr. Reed's office, in the presence of Mr. Gladwell and Mr. Terry, about their both having money?

A. Let me tell you what I said; if you will let me tell what I said.

148 Q. I will ask you if you didn't state that they both had money?

A. I don't know whether I did or not.

Q. But I know what you said; what did you say?

A. I said when these men first came to my house to buy corn that Steadman had a knot on his leg here about as big as that [doubling up his fist], and I was talking to him and I told him I had seen the time fifteen years ago when a fellow going along with that much would get it took off, and he said his partner had a roll too.

Q. Did he say his partner had two or three hundred dollars?

A. I don't know whether he did or not.

Q. Did he tell you how much he had?

A. No, sir; he said Alexander had some besides it. I was talking about what he had on his leg, and he said his partner had some, and I told them if one of them got killed they couldn't get all the money, and they would have to kill them both to get all their money; I just made that remark; I didn't think of anything happening to him.

Redirect:

Col. CLAYTON. You say it is not true that you have been abusing Caroline?

A. No, sir; of course I don't want to state here what we was doing; I

was proddin' her and playin' with her; of course I don't want to state in court what I was doing, but if they press it on me I will.

Q. Playing with her?

A. Yes, sir.

Q. She is here?

A. Yes, sir.

Q. A witness on the other side?

A. Yes, sir.

Q. They can put her on the stand and ask her about it if they want to?

A. Yes, sir; they can ax her.

149 Q. Now, Bruner, I want to ask you what it was that you said that Alexander told you on Tuesday, as to where he left his partner?

A. He said he come through Meagher's land to kill that deer.

Q. Said who did?

A. Mr. Steadman.

Q. To kill a deer?

A. Yes, sir.

Q. What was he to do?

A. He said he was to meet him at the north corner of the field.

Q. Steadman was to go through, and he went around the field to meet him there. He said he went around the field, and that Steadman went through the field to kill a deer?

A. Yes, sir.

Recross-examination:

Col. CRAVENS. You said, I believe, that the people were around your house two nights hunting for Steadman and this woman. What nights were they there?

A. Monday night.

Q. What other night?

A. Tuesday night.

Q. Who was there, Jim?

A. Well, I couldn't tell you; it was in the night.

Q. Who were there?

A. I couldn't tell; it was in the night.

Q. Did you see any one?

A. Of course; I got out of the house when I heard them around the wagon.

Q. Did they appear to be several, four or five?

A. It looked like some three or four.

Q. Did you see them in daylight?

A. The next morning I was going in the field and I saw three men right at the crib, and one of them come around and peeped in at the crib.

Q. That was the crib they had been sleeping in?

A. Yes, sir.

150 Q. What time in the morning?

A. About six or seven o'clock.

Q. Early in the morning?

A. Yes, sir.

Q. Who were they that came up there?

A. I couldn't tell you; when they stopped up there I went on to the cotton patch.

Q. They got on their horses and rode off?

A. I don't know whether they was riding; I saw them peep in the crib.

Q. They had guns, did they?

A. I couldn't tell whether they had guns or not.

Q. Didn't you tell these parties that they did have guns?

A. No, sir.

Q. Didn't you tell Mr. Reed?

A. I told them Caroline saw them and said they had guns, but not me.

Q. Didn't Alexander pay for the first corn that was bought there?

A. No, sir.

Q. Didn't you tell Gladwell that he paid for the first corn?

A. No, sir.

Q. Didn't you tell him that sometimes Alexander paid fort he corn, and sometimes Steadman paid for the corn?

A. Know he paid for the corn once.

Q. Didn't you tell Gladwell that one time when Steadman could not pay for the corn, or couldn't make the change, that Alexander did?

A. I don't know anything about that.

Q. And that when they were paying for the corn that they said they were partners?

A. He said they was partners.

Q. Who said so, Steadman?

A. Yes, sir.

151 Q. And partners in the horses; he said their interest was half and half in the stock.

A. Yes, sir; that is what he said.

Q. Now, didn't he state that Steadman owned one horse that Alexander wasn't interested in, and that Alexander owned a mare and two colts that Steadman wasn't interested in?

A. I don't know.

Q. Wasn't there something like that?

A. I never heard nothin' like that.

Q. Didn't Mr. House tell you when you came down here he wanted you to come down here and help break Alexander's neck?

Col. CLAYTON. One moment; don't answer that question. House is here.

Col. CRAVENS. I will ask you *Q.* if you didn't tell Mr. Gladwell when you were coming down here that House wanted you to come down here and help break Alexander's neck.

(Witness makes inaudible answer.)

Col. CLAYTON. Go on and answer the question; we withdraw the objection.

Col. CRAVENS. What did you say, Jim?

A. Who said that?

Q. What did you say just now?

A. I don't understand you.

Q. Did you understand what I asked you? What was it you said just now?

A. I don't remember what I said now.

Q. I will ask you if you didn't tell Mrs. Gladwell, this old lady, that Sam House wanted you to come down here and help break Alexander's neck?

A. No, sir.

Q. Who did you tell here that he wanted you to come and do it?

A. I never told anybody.

Q. Jim! What? After the marshals had Mr. Alexander a
152 prisoner, I will ask you if they didn't search in Steadman's clothes and find some money?

A. Yes, sir; they found some money.

Q. In Steadman's clothes?

A. Yes, sir.

Q. Deputy marshals found it and took it?

A. Yes, sir.

Q. Where did they find it?

A. Out there in the wagon.

Q. In Steadman's clothes.

A. Yes, sir.

Q. I suppose it was his own?

A. I couldn't tell.

Q. Tell all about that, Jim.

A. Well, they had an old sack that had a lot of dirty clothes in it, and the marshal, he took all the clothes out and searched in the clothes, and asked that man, and asked Alexander whose clothes them was, and he told him—him and Steadman's, both together—and he goes through the dirty clothes and they found a pair of overalls what had been in the river and got wet, and they searched in the pockets and they found a dollar and a half, or either a dollar and a quarter in the overall pocket, and went into his trunk, and I don't know whether it was in his pants pocket or his coat, and they found four or five dollars in one pocket, and I think it was five dollars in another pocket.

Q. Some of this was found in his trunk?

A. Yes, sir.

Q. Was that found in the trunk besides what they found in his overall pocket?

A. Yes, sir; the biggest part of it was in his trunk.

Q. This dollar and a half, or whatever it was, was in the wagon-bed, and five dollars in one pocket, and three or four dollars in another, in his trunk?

A. Yes, sir; I can't tell how much it was; I am only guessing at it.

153 Re-redirect.

Col. CLAYTON. How do you know that was Steadman's clothing?

A. When the marshal asked whose clothing it was, Alexander said it was him and Steadman's clothing together.

Q. And they got about eight or nine dollars out of the pockets?

A. Yes, sir.

JOHN C. WEST.

Col. CLAYTON. Please state your name?
A. John C. West.
Q. You are a deputy marshal?
A. Yes, sir.
Q. Please state if you arrested the defendant?
A. Yes, sir—or I and Mr. Thomas did.
Q. Where did you arrest him?
A. About seven miles west of Muskogee.
Q. Did you know Steadman?
A. No, sir.
Q. When you arrested defendant, please state if you found any money on his person?
A. Yes, sir.
Q. How much money did you find?
A. Found $340.00.
The COURT. That was on the defendant?
A. Yes, sir.
Col. CLAYTON. What kind of money was it?
A. Well, the most of it was greenbacks. There was $240.00 in greenback', and 100 in gold.
Q. What kind of pieces?
A. There was five 20-dollar gold pieces.
Q. And the balance in greenbacks?
A. Yes, sir.
Q. When did you arrest him?
A. It was some time in November, I think.
154 Q. Where did he have the money?
A. He had $220.00 rolled up in a rag, in greenback'.
Q. Where did he carry it?
A. He had it down in his pocket.
Col. CRAVENS. In what pocket?
A. In his pant's pocket; in the front pocket. Then he had five 20-dollar gold pieces down in this little watch pocket.
Col. CLAYTON. Little fob pocket in his pants?
A. Yes, sir; and there was 20 dollars in his pocketbook.
Q. $220.00 was rolled up in a rag, a $20.00 bill in his pocketbook, and 100 dollars in 20-dollar gold pieces. That was sometime in November?
A. Yes, sir.
Q. Did you have any talk with him about Steadman?
A. Very little.
Q. Did you have any talk with him about how much money Steadman had?
A. I asked him how much money Steadman had.
Q. What did he say?
A. He said about $400.00.
Q. Did he say what kind of money?
A. He said most of it was in greenback'. And there was one gold piece, and the balance, about fifteen dollars, in silver, and the rest in greenbacks.

Q. Who searched the defendant?
A. Mr. Thomas.
Q. He said nothing else to you about this matter.
A. No, sir.
You can have the witness.

Cross-examination.

Col. CRAVENS. He said most of the money Steadman had was in greenback'?
A. Yes, sir.
Q. He said he had one gold piece. Did he say what size it was?
No, sir.
155 Q. He had one gold piece and the balance in silver, 10 or 15 dollars. Am I correct?
A. He said most of it was in greenback', and he had one gold piece and about 15 dollars in silver.
Q. Where did you first see defendant, John?
A. He overtaken us about seven miles west of Muskogee.
Q. Where were you going?
A. We were going up there in this country.
Q. Going up where?
A. Up to Choska.
Q. To investigate the killing?
A. Yes, sir.
Q. He came up behind you?
A. Yes, sir.
Q. Followed you from Muskogee? Did he tell you when he overtook you that he had been to see the agent, and the agent told him you had gone out there?
A. Yes, sir.
Q. He was coming in the direction of from the agent, or from the agency?
A. Yes, sir.
Q. I will ask you if that wasn't a small purse instead of a pocketbook?
A. Yes, sir; money purse.
Q. It wasn't a pocketbook in the shape of this (showing pocketbook)?
A. No, sir.
Q. It wasn't a book?
A. No, sir.
Col. CLAYTON. It had more money in it than yours.
Col. CRAVENS. If it didn't, it didn't have any.
Col. CLAYTON. If you will go to your law books and make a lawyer of yourself your pocketbook will be full.
156 Col. CRAVENS. I will ask you if he didn't have a little silver in it?
A. Yes, sir.
Q. After he overtook you, going from Muskogee out to Choska, you went right on; you didn't turn around and go back to Muskogee?
A. Yes, sir; we went right on to their camp.
Q. Where they had been camped?
A. Yes, sir; we went to Lipscomb's store; went there that night, and then went down to the camp the next day.

Col. CLAYTON. Was it before or after you found this money on him that he told you how much Steadman had?

A. It was afterwards.

Q. Did you talk to him any about it there at Bruner's?

A. No, sir.

Q. I will ask you if when he came up to you, if he didn't tell you he was a partner of the man that was killed?

A. Yes, sir.

Col. CRAVENS. Let him state it.

Col. CLAYTON. I will ask you, then, what did he say?

A. That was when he overtaken us. I can tell you what he said: Well, he came up to us, up behind us, and I didn't know his name, and there was a man there with us by the name of Gus Orcutt, who had come after some one to see about this killing, and we was riding along—it must have been four or five o'clock in the evening—and he come riding up by the side of us, and Orcutt says, "How are you, Alexander?" and he spoke to him, and Orcutt gave me to understand he was the man accused of killing Steadman, and Heck turned around then and rode on his right, and he said, or I dis-remember who said it, but anyhow he said he wanted the officers to go up and see about his partner being killed, and I says, "Do you say
157 Steadman was a partner of yours?" and he said, "Yes, sir; he is a partner of mine," and about that time Heck rode around and pulled his pistol down on him, and he says, "Are you a partner of his?" and he says, "No, sir." I says, "Didn't you tell me you was a partner of Steadman?" He says, "No, sir; I didn't say that."

Col. CRAVENS. At first he said he was a partner of Steadman, and then after you pulled your pistol on him and said: "Are you a partner of Steadman?" he said "No." He was looking at the pistol when he said that?

A. Yes, sir.

Q. In your hand?

A. Yes, sir.

Q. I don't blame him. I would not have been his partner, either. You may stand aside.

NEWTON M. STEPHENS.

Col. CLAYTON. Your name is Newton M. Stephens?

A. Yes, sir.

Q. What is your business?

A. Practice medicine.

Q. Do you know this defendant?

A. Yes, sir.

Q. Did you know Steadman in his lifetime?

A. No, sir; I didn't know Steadman.

Q. Do you know where Scott Gentry lives?

A. Yes, sir.

Q. How far did you live from him?

A. About a quarter of a mile.

Q. You say you didn't know Steadman?

A. No, sir.

Q. Had you ever seen him?
A. No, sir.
Q. When did you first see the defendant?
A. I think I saw him the day after they buried the body.
Q. You never saw him until after the body was found. Where
158 did you see him on that day?
A. In the store at Choska.
Q. How do you spell that?
A. C-h-o-s-k-a.
Q. You saw him the day after the body was buried?
A. Yes, sir.
Q. Did you have any talk with him about this matter?
A. Yes, sir; we talked two or three times about it; different times.
Q. I will get you to state what he said to you, more particularly about the money, if there was anything said about the money, but state all that was said?
A. The first time I talked with him, Mr. Lipscomb introduced him to me, and he just says: "Here is a man that wants to see you; wishes to make a statement." I can't remember all that was said. I had a short talk with him.
Q. What was said then?
A. He said he wanted to make a statement to me; a statement to send to the paper at Muskogee for publication.
Q. Did you write out a statement?
A. Not that day; we talked on a good while, and he told me where he had the horses.
Q. I want you to tell all he said about that?
A. Well, he just told me about them having a certain number of horses, and that he had sold his interest to Steadman in his horses, all but three, and I quit talking to him; there was a customer came in the store, and the conversation stopped, and he followed me up, and he told me his partner had six or seven hundred dollars on his person.
Q. Did he tell you whose money it was?
A. No, he just said he had six or seven hundred dollars; then I was called on, and I asked him to come back the next morning, I was waiting on customers. The next morning he came back, and he told me that
the last time he saw his partner, was right where he was found
158 and he was looking up a tree, to get a shot at a squirrel, and then we talked on some, and I got a piece of paper, and took my pencil, and asked him what I should write, and it was something like this: "Found: The dead body of D. C. Steadman, one mile east of Choska store; I recognize the body by a bill of sale that I had given him for some horses, and by pieces of clothing that was found——
Col. CRAVENS. That was the second conversation?
A. Yes, sir. (Continuing.) "The said D. C. Steadman has a nephew living in Arizona, and a brother in California, and I will notify them. And then, after we had talked about that, he gave me a five-dollar bill, and asked me about what I thought it would cost to put the notice in the papers, and I told him I didn't know, and he said he had one published before and it cost a quarter, and he handed me this five-dollar bill, and said it was the last bit of money he had in the world.

Col. CLAYTON. He gave you that five-dollar bill in Lipscomb's store to change it for him?

A. Yes, sir; I kept fifty cents and gave him $4.50.

Q. When he gave you that five-dollar bill he claimed that was all the money he had in the world?

A. Yes, sir. He says: "You had better put it down between five and six hundred dollars." He was sure he had that much with him.

Q. The day before he said seven or eight hundred dollars, and then he said you had beeter put it down five or six hundred; he told you that the five dollars he handed you was all the money he had in the world, and that Steadman had taken off all his money, and that day he told
160 you that the last time he saw his partner was about 75 yards from where he was found dead. Did he say what he was doing?

A. No, sir; not that day.

Q. Did he say the day before?

A. He told me he was looking up a tree to get a shot at a squirrel?

Q. Did he say anything about his horses—about his bringing them home?

A. He didn't tell me anything about that.

Q. That is the only statement he made to you in regard to that matter?

A. That is all that I think of.

Q. I will ask you if you know where deceased was found?

A. Yes, sir; I have been by there several times.

Q. Had you been there before he talked to you?

A. No, sir.

Q. In speaking about this matter, did he tell you where he seen him last?

A. Yes, sir; I remember that he told me that he remembered the place where the body was found by a large oak tree, and I asked him how he knew that was the place, and he said he remembered that he was looking up that there tree for a squirrel, by a branch that was broken off.

Q. Did you notice?

A. I never noticed particularly, but I have heard it spoken of.

Q. He mentioned it to you that that was the place where he was looking up at a squirrel, where the branch was broken off.

A. Yes, sir.

You can have the witness.

161 Cross-examination:

Col. CRAVENS. You never saw Mr. Alexander until after the body was found?

A. No, sir.

Q. You are a doctor?

A. Yes, sir.

Q. Have you a family?

A. Yes, sir.

Q. Where?

A. Out at Choska.

Q. Was your family there at that time?

A. No, sir; living in this county.

Q. Where?

A. Seven miles east of Greenwood.

Q. How long had you been living there?
A. Since Christmas a year ago.
Q. You was up there at Choska without your family?
A. Yes, sir.
Q. How long had you been there?
A. Two or three days; I went there about the 1st, I believe, or third of November.
Q. When was the man found—the remains found?
A. Well, he was found the third day after I was there.
Q. Did you go to the place where the body was found—the remains were buried?
A. No, sir.
Q. How did you go to Choska?
A. I went to Muskogee on the train, and went to Choska in a buggy?
Q. You went over in a buggy?
A. Yes, sir; I got a fellow from Evan's stable to drive me out.
Q. You didn't have any horses?
A. No, sir.
Q. What were you there for?
A. Looking up a location to practice medicine.
162 Q. You say Lipscomb introduced you to the defendant?
A. Yes, sir.
Q. Lipscomb is a brother-in-law of Sam House, isn't he?
A. Yes, sir.
Q. Are you related to Sam House?
A. No, sir.
Q. Are you related to Lipscomb by marriage or in any way?
A. No, sir.
Q. Lipscomb is a brother to this woman that ran off?
A. I have heard so.
Q. Were you there when the woman ran off?
A. No, sir.
Q. How long have you been down here, Stephens?
A. Four weeks to-morrow.
Q. You have been riding around a good deal in company with Mr. Steadman there (deceased's brother), haven't you?
A. No, sir; we have never been in a buggy together.
Q. Haven't you been riding around the country with him?
A. No, sir.
Q. You and he board at the same place?
A. Yes, sir.
Q. Where do you board?
A. At the New Windsor Hotel.
Q. What day was it you first saw the defendant?
A. It was the second day after the body was buried.
Q. What day of the week or month—you wasn't there when the body was buried?
A. No, I had just heard them talking about it.
Q. You say you have been there at the place several times; did you have any business there?

A. I rode past there; and have been at the place several times to see the place; I have rode past it——

Q. When was the first time you went out there?

163 A. I could not say.

Q. Who went with you?

A. I don't remember.

Q. When was the second time you were there?

A. I don't remember.

Q. Who went with you?

A. I don't remember that?

Q. When was the third time you were there?

A. I could not recollect any certain date.

Q. Who went with you the third time.

A. I don't remember of any one ever being there with me.

Q. You just know that you went up the bottom on the road that runs along there. Nobody ever showed you the place where the remains were buried?

A. I think some one did, but I don't recollect; I don't recollect of any one ever being there with me, but I think it was pointed out to me.

Q. How could it be pointed out to you unless some one was there?

A. I think I was riding by there.

Q. It couldn't be pointed out from the town.

A. I will say that there was some one with me.

Q. You are taking back that there was no one with you?

A. There was no one with me out to where he was buried, but there was some one going along the road.

Q. Who was that?

A. I don't remember.

Q. You just stated, I believe, that no one was over there—out to the place where the body was buried?

A. Out to the place, but along the road.

Q. When; the first time, second time, or third time?

A. I can't remember.

Q. Was you walking or riding?

A. Riding.

Q. What were you riding?

A. A pony.

164 Q. What were you doing up there?

A. Went on business there?

Q. Yes, sir.

A. I was going to see a patient.

Q. Who was you going to see?

A. Well, I remember once I passed there going to see Orcutt's family?

Q. Where does Orcutt live?

A. On the prairie, about three miles east of Choska.

Q. He lives on the prairie?

A. Yes, sir.

Q. The first conversation you had, you think, was the second day after the remains were buried?

A. Yes, sir.

Q. Was it on the same day or the next day?

A. The next day.
Q. Where was it you were introduced to him?
A. In the store.
Q. Lipscomb introduced you?
A. Yes, sir.
Q. And then you talked to him for about how long?
A. Well, off and on, for an hour.
Q. How long did you talk to him at that time?
A. Possibly—well, we were talking, off and on, for an hour.
Q. What do you mean?
A. In all the time I talked with him.
Q. How long at that time?
A. About 15 minutes.
Q. You didn't talk with him at that time for an hour?
A. No, sir; I meant altogether.
Q. You only had a short conversation with him at that time?
A. 15 or 20 minutes.
Q. And then the next day you talked with him again. How is that?
A. I would call that a short time; an hour at each time.
Q. Did you talk an hour at each time?
A. No; we didn't consume over an hour during the whole con-
165 versation. I was waiting on customers.
Q. Where?
A. In the store.
Q. Employed in the store as a clerk?
A. Yes, sir.
Q. Lipscom's clerk?
A. Yes, sir.
Q. Didn't you tell Alexander that you lived in Fort Smith, and were coming home the next day, and wasn't that the reason he sent the notice by you; didn't you tell him that you was coming here the next day, and that you were living here, and was coming here the next day?
A. Yes, sir.
Q. That was the first conversation?
A. That was the second. He said he wasn't going to Muskogee, and he had me bring the notice.
Q. And paid you half a dollar to have it published in the paper?
A. Yes, sir.
Q. What did you do with it?
A. I gave it to Gus House, and he gave it to the postmaster at Muskogee.
Q. Wasn't the post office kept in the store at that time?
A. They had no post office there.
Q. You have no post office there at all?
A. We have now, but didn't have then.
Q. You gave the money and the notice to Gus House, did you not?
A. No, sir; I gave the money to the jailer over here.
Q. When?
A. In February.
Q. What did you do with the notice?
A. I gave it to Gus House.

Q. What for?

A. He came in town with me, and when we got there the train was just ready to go, and I asked him if he would have it published.

166 Q. You didn't hand him the half dollar, to have it published?

A. Yes, sir.

Q. I thought you turned it over to the jailer?

A. I did when I come down to Fort Smith.

Q. Did Gus give it back to you?

A. Yes, sir.

Q. He didn't have it published?

A. No, sir.

Q. The notice wasn't published?

A. I never heard it if it was.

Q. I will ask you if you didn't advise him not to do it at all?

A. Advise who?

Q. Alexander, when he proposed to have the notice published. I will ask you if you didn't advise him, or tell him you wouldn't do it, and if they wanted to to let him hunt them up?

A. No, sir.

Q. You deny that, do you?

A. Yes, sir.

Q. What day was it you had the conversation with him, in reference to this money?

A. It was the first time that I talked with him.

Q. That is, the money which Steadman had?

A. Yes, sir.

Q. What did he say then he had?

A. Between seven and eight hundred dollars.

Q. That was the day you were introduced to him?

A. Yes, sir.

Q. You said this way before the commissioner; has this statement been read to you since you have been here at this trial?

A. Yes, sir.

Q. When?

A. Monday, I think.

Q. Where?

A. In the office here.

167 Q. I will ask you if you didn't say this before the commissioner: "He said he didn't have any money but the $5.00, and he gave that to Lipscomb to get change to give me 50 cents to have the notice published." And it was in that conversation that he told you Steadman had six or seven hundred dollars. Was it the first day that he talked to you about having the notice published?

A. No, sir.

Q. I will ask you if this notice didn't state that the deceased had a brother living in California?

A. Yes, sir.

Q. Give his address?

A. No, sir.

Q. Didn't it state that he had a nephew in Arizona, and give his address?

A. Not that I remember of.

Q. You don't remember that; did you ask him where his brother was in California, or where his nephew was in Arizona?

A. No, sir; he just made that remark, and that he would write to them.

Q. Now, when was it that he told you that the last time he saw his partner was right where the body was found?

A. The first day.

Q. Now, the first time that he told you about where he saw Steadman he told you that the last time he saw him he was at the place where the body was found, and then the next time he said the last time he saw him he was maybe 75 yards away from there?

A. Yes, sir.

Q. Did you call his attention to the difference between the two statements that he had made?

168 A. I never called his attention to it.

Q. Did you call his attention to the fact that one time he said he saw him right at the place and the next time he said he saw him 75 yards from the place?

A. No, sir.

Q. At the time he was talking to you about this you never had been to that place and didn't know anything about the locality or the surroundings?

A. No, sir.

Q. Never had been there?

A. No, sir.

Q. Now, doctor, here is what the commissioner has you saying: "The first time he told me the last time he saw his partner, he said it was in 75 yards of where he was found dead." Now, you say it was the last time. Now you say that the first time you talked with him he told you it was right at the spot; that is what you say to-day?

A. Yes, sir.

Q. You testified before the commissioner that he told you the second time, that the last time he saw him was right at the spot where he was found dead, and that the first time he said he was 75 yards away. "The first time he told me that the last time he saw his partner, he said it was within 75 yards of where he was found dead, and the last time he told me he said it was right where he was found dead; he said he went to shoot some squirrels. Now, you have just reversed that?

A. Yes, sir; but I have got it right now.

Q. You were wrong before?

Col. CLAYTON. You have no right to tell him what he testified to before; the commissioner might have gotten it wrong; you have no

169 right to tell him that he testified so and so; ask him if he said it.

Col. CRAVENS. I will ask you if you didn't say this before the commissioner, in your examination in chief: "He said the last time he saw deceased was when he got down off his horse and went to shoot squirrel, about 75 yards from where his body was found; this was after they had found the body that he told me this. He didn't say anything about a bill of sale. He said he had sold all his horses but three." Did you state that before the commissioner, that the first time he told you the last time he saw his partner was 75 yards from where the body was found,

and the last time he told you that the last time he saw his partner was right where the body was found?

A. Possibly I did.

Q. Now, that wasn't right, was it?

A. No, sir. I am sure I have got it right this time.

Q. What information have you got about it that you didn't have before the commissioner?

A. Well, I have studied it out; I may have forgotten at that time, but I am sure I have it right now.

Q. You were sworn then?

A. Yes, sir.

Q. You were under oath?

A. Yes, sir.

Q. To swear the truth?

A. I won't say that I did say that.

Q. When were you before the commissioner?

A. I think it was in February.

Q. (Looking at papers.) It was on the 30th day of January that the examination commenced; that was within two months of the occasion——

A. About three months.

Q. It was about the last of January, the 30th day of January,
170 that you were before the commissioner. Now, you can recollect now better than you could then, can you?

A. Yes, sir; I remember very distinctly now.

Q. And you swear very distinctly now that it was the first time he told you about it that he said the last time he saw his partner was right where the body was found, and the next time he said he was within 75 yards of the place. You admit now that what you first said——

A. I don't remember what I said before the commissioner.

Q. Didn't you state a minute ago—I will ask you if you deny that you stated that before the commissioner?

A. I say I don't remember; they might got it down wrong.

Q. They may have put it down wrong, of course. This was read over to you a day or two ago. When, did you say?

A. Monday, I think it was; I didn't pay much attention to it.

Q. Are you still clerking in that store up there, when you are not riding?

A. Yes, sir.

Q. Clerking for Mr. Lipscomb, a brother of Mrs. House. Did you state before the commissioner that there was a good deal of excitement around there at that time?

A. I don't remember; possibly I did.

Q. How was it? Was there much excitement?

A. Yes, sir; I think there was.

Col. CLAYTON. You should have asked him first and then waited until he denied it.

Col. CRAVENS. How did you say it was about the excitement?

A. There was considerable excitement.

171 Q. The excitement was about that woman disappearing, and this man disappearing at the same time?

A. Yes, sir.

Q. And it was said they had disappeared together?
A. That seemed to be the general talk.
Q. Were they hunting for the man and woman after you got there?
A. No, sir.
Q. That was over before you got there?
A. Yes, sir.
Q. At what school of medicine did you graduate?
A. Keokuk, Iowa.
Q. When did you come to Arkansas?
A. Five years ago.
Q. Where have you been living since you came here?
A. One year in Scott County, one year in this county, and three years on White River.
Q. Where is that?
A. Madison County, 25 miles east of Fayetteville.
Q. White River, Scott County, Sebastian County, and Choska?
A. Yes, sir.
Q. How long since you first came to this State?
A. Five years.
Q. When did you go first to Choska store?
A. About the first of November or maybe the third; I don't remember just the date now; I think it was the first of November.
Q. Do you know this James family?
A. Yes, sir.
Q. I will ask you if you didn't change a five-dollar gold piece at one time, and a five-dollar bill at another, for them?
A. I have changed several bills for them.
Q. How much in gold?
A. Five dollars.
Q. And how many bills.
A. I remember one five-dollar bill.
172 Q. I will ask you if it wasn't a ten-dollar bill, too?
A. No, I don't remember.
Q. I will ask you if you didn't state to Mr. Reed that you had changed a five-dollar gold piece, a five-dollar bill, and one ten-dollar bill since you went to Choska?
A. I don't remember.

Redirect:

Col. CLAYTON. Doctor, you say a five-dollar gold piece and a five-dollar bill. When was it?
A. It was some time in December.
Q. That is ten dollars?
A. Yes, sir.
Q. The whole of ten dollars. I suppose it is not an unusual thing to change the whole amount of ten dollars for a family inside a few months?
A. No, sir; we often change bills there.
Q. And gold, too, I suppose?
A. Some. We don't get much gold.
Q. You say there was some excitement up there, and you say it was thought, until after the body was found, that the man and woman had gone off together, by the public, generally?

A. That was the general talk.
Q. Was it the usual talk after the body was found?
A. No, sir.
Q. Only up to the time the body was found that the people supposed they had gone off together?
A. Yes, sir.
Q. This statement made before the commissioner, in which the statement you now make is reversed, you don't know what statement you did make before the commissioner; whether you were mistaken, or whether the commissioner was mistaken?
A. No, sir.

Q. But you are certain that in his first conversation he told you
173 that the last time he saw his partner he was looking up a tree, right where the body was found?

A. Yes, sir; I am positive about that.
Q. And the second statement he made was, that the last time he saw his partner he was 75 yards away?
A. Yes, sir.

IVERSON CARD.

Col. CLAYTON. Your name is Iverson Card?
A. Yes, sir.
Q. You were before the commissioner?
A. Yes, sir.
Q. You live up in the Creek Nation?
A. Yes, sir.
Q. How far did you live from Jim Bruner at the time Mr. Steadman disappeared?
A. About a quarter.
Q. In what direction?
A. North; both of us lived on the same farm.
Q. On Scott Gentry's farm?
A. Yes, sir.
Q. Do you know defendant, Alexander?
A. Yes, sir.
Q. Did you know Mr. Steadman?
A. Yes, sir.
Q. When did you first see the defendant, if you remember, to first know him?
A. I can't remember when I first saw him.
Q. I will ask you if you saw him a short time before the body of Mr. Steadman was found?
A. Yes, sir.
Q. Where did you first see him?
A. I met him; I had been hauling poles or logs, I disremember which; it was something to build a crib with, and I met him.
Q. Where?
A. On the prairie on Mr. Gentry's farm.
Q. Where it wasn't fenced?

A. It was where they was putting up posts; they had about got the posts all up.

Q. What did he want?

174 A. Yes, sir; he wanted me to go with him down to Mr. Perryman's, Bill Perryman's.

Q. Did he have anything with him, any paper or note?

A. Yes, sir.

Q. Did you read it?

A. No, sir.

Q. Did he tell you what it was?

A. Yes, sir; we went on and we got, I reckon, about two miles, and he asked me could I read, and I told him a little, not so powerful much, and he said he had a paper, and I looked at it a little, and I said I couldn't read it, and he said it was a paper in regard to his partner being found dead.

Q. Would you know the note if you saw it?

A. Yes, sir; I think I would.

Q. Do you know whose name was to it?

A. Yes, sir; Mr. Perryman.

Q. (Handing witness note marked "Exhibit A.") See if that is the note.

A. I think it is the note.

Q. What did he say to you about it?

A. We went on down there then, and Perryman——

Q. What was said before you went down there?

A. He said then that his partner—no, he said that he got a note in regard to his partner being found dead, and he knowed he had been dead so long that there wasn't anything there but bones, and he guessed we had just as well bury him when we come back from there; I don't know whether he said this when we was coming back or when we was going down, but it was one or the other, and I am not certain; but that is what he said, that there wasn't anything but bones there; and I told him then that I thought we had better not do it, but we had better wait and get an officer.

175 Q. Had you been down to Perryman's when he told you that?

A. Yes, sir.

Q. Well, go on and tell us about that; we want to get that first.

A. Well, we went down there, and Perryman told him an Indian man had found a body up there. I forget his name—Island—Ben Island, I think it was, had found a body up there with some papers on the man, and that we had better look and see if that was his partner.

Col. CRAVENS. Perryman said that?

A. Yes, sir.

Q. Perryman said Ben Island had found the body?

A. Yes, sir; then he said we had just as well go up there and bury him; there is nothing there but bones, and I told him No, we had better get some officer, or Light Horse, or something, and I told him to go with us up there, and Perryman said it was getting late, and for us to stay all night, and we told him we had to go home, and we agreed to meet there at the Rabbit House the next morning, and we went on.

Col. CRAVENS. This was a conversation that took place up at Perryman's?

A. Yes, sir.

Col. CLAYTON. Go ahead.

A. Well, early in the morning together we went up there, and we went down and got this Light Horse, and then we went up there and waited awhile, and Mr. Perryman didn't come. I believe there was four or five of us, and we got in abreast, and went the way this man told us to.

Q. Was Perryman with you?

A. No, sir; he didn't come, and then we went on, I reckon,
176 two or three hundred yards, maybe 250, somewheres about that distance, and then we found them; we rode up on him, and I called to this horse captain and told him there he was.

Q. You found them; what did you find, Iverson?

A. The first thing I saw was a gun.

Q. Is that the gun (pointing to gun)?

A. Yes, sir; it looks like the same gun.

Q. You can take it in your hand.

A. (Taking gun in his hand.) A. I don't know exactly, but it looks like it.

Q. Was it a breechloader?

A. Yes, sir.

Q. Was it a breechloader that works this way (working gun)?

A. Yes, sir; it worked just like that.

Q. You take that to be the same gun?

A. Yes, sir.

Q. Where was that gun lying?

A. The gun was lying about 10 or 15 steps from his body.

Q. Now, then, just go on and tell us all you found?

A. Well, we found some papers there.

Q. Was the defendant there?

A. Yes, sir; he was.

Q. Did he say anything about who it was?

A. Yes, sir; he said the knowed the gun, and he knowed the spurs.

Q. Look at these spurs and see if those are the spurs you found (handing witness spurs)?

A. Well, I couldn't say whether they was the same spurs, but they look just like them.

177 Q. He said he knew the spurs and knew the gun?

A. Yes, sir.

Q. Did you find any papers?

A. Yes, sir; we found some papers with Steadman's name on them.

Q. Do you remember the initials?

A. No, sir.

Q. You found some papers?

A. Yes, sir.

Q. Would you know any of them if you saw them?

A. I don't know, sir; I hardly think I would.

Q. Do you remember what kind of papers they were?

A. No, sir.

Q. There were some papers there with his name on them?

A. Yes, sir.

Q. Were these papers torn, or were they whole?

A. Yes, sir; then we found two pieces of a twenty-dollar bill there, was about all the money that I seen.

Q. What was the condition of the body?

A. It was torn up; badly torn up.

Q. What was it torn up by?

A. It looked like the hogs.

Q. How about the skull?

A. It was all torn up; busted all to pieces.

Q. Did you find any indications of a wound upon any part of the body?

A. No, sir; we couldn't tell, only it just looked like we could see one buckshot hole.

Q. Where?

A. In the skull.

Q. That was when you found it?

A. Yes, sir.

Q. I have this piece of skull here; I have sent down for a surgeon to locate it. Do you know what was done with the skull?

A. We buried it.

178 Q. Are you sure about that?

A. Yes, sir; I think so.

Q. How did the skull get here; do you know?

A. No, sir; I don't know who brought it here?

Q. Buried, was it. Do you know whether it was taken up or not and brought here?

A. No, sir.

Q. Was there anything said about maybe he had shot himself?

A. Yes, sir; some man in the crowd spoke up and said maybe he had shot hisself, and then I told this George Lewis, being as he was a light-horse captain, to take a hold of the gun and unbreech it, and see——

Q. Never mind what you said.

A. Well, he did, and it had a loaded hull in one barrel, and the other one didn't have any hull in it at all.

Q. One barrel was loaded and the other one was empty?

A. Yes, sir.

Q. If he had shot himself, one shell would have had to have been in there that had been fired?

A. Yes, sir.

Q. Do you know what became of the horses that they had up there?

A. No, sir.

Cross-examination:

Col. BARNES. I believe you say it was after you had been down to Perryman's that you was talking about burying this man?

A. Yes, sir; we was coming back.

Q. And the talk was as to whether you would bury him there or somewhere else. You had heard Mr. Perryman talking about what had been found there?

A. Yes, sir.

179 Q. It was reported there at Perryman's that nothing but the remains had been found?

A. Yes, sir.

Q. And you heard there was a gun there, I believe?

A. Yes, sir.
Q. Well, then, the next morning you were to meet these men?
A. Yes, sir.
Q. Had you met these men before?
A. Who?
Q. Alexander and Steadman.
A. Yes, sir; I had seen them before.
Q. They appeared to be intimate friends?
A. Yes, sir; they had been at my house several times.
Q. Your statement is that they appeared to be quite intimate.
A. Yes, sir.
Q. When you met this man he told you about getting this note from Perryman?
A. Yes, sir.
Q. And that it was something about his partner?
A. Yes, sir.
Q. And that he wanted you to go with him?
A. Yes, sir.
Q. You told him you had work on hand, and didn't see how you could leave?
A. Yes, sir.
Q. He told you he wanted you to go with him; he said he was a stranger, and he would pay you for your trouble?
A. Yes, sir.
Q. This is what you stated before: "He wanted me to go with him; he said he was a stranger, and would pay me for my trouble?"
A. Yes, sir.
Q. You told him if you must go you would, but that you didn't have any saddle?
A. Yes, sir.
Q. And he told you you could use his, and he would get another?
A. Yes, sir.
180 Q. Then he asked you if you could read?
A. Yes, sir.
Q. And you told him you couldn't read very much, and he said he just wanted you to go with him?
A. Yes, sir.
Q. He said a man by the name of Perryman had written him?
A. Yes, sir.
Q. And if you would go with him, he would pay you what was right?
A. Yes, sir.
Q. Now you say Perryman designated the Rabbit House as the place where you were to meet?
A. Yes, sir.
Q. You don't know whether this man knew the name of the house or not?
A. No, sir; I don't know as he did.
Q. Now, he wanted you to go with him; he told you he was a stranger, and you told him you could hardly go; you complained about your work, and he says, "Yes, please come and go, because I don't know any one," or something of that sort?

A. That was the idea.

Q. He didn't know where the place was, and Perryman had told you where it was, as well as he could, from what the Indian had told him, and designated the Rabbit House as the point where you were to meet the next morning and start out to hunt. You had the light horse, this man Lewis, to go with you?

A. Yes, sir.

Q. You say when you got there Perryman hadn't got there yet, and you waited for him awhile, and then you concluded you would go to hunting?

A. Yes, sir.

Q. And Alexander was with you, and you hadn't gone very far until you found the body?

A. Yes, sir.

181 Q. Alexander went out and hunted on his beat just like the rest of them?

A. Yes, sir.

Q. You scattered out through the woods?

A. Yes, sir; there was four of us there, I believe; we just all got out in a breast and hunted.

Q. Did this man get on his beat and hunt like anybody else?

A. Yes, sir.

Q. Was his conduct like anybody else's?

A. Yes, sir.

Q. Nothing unusual about his conduct?

A. We wasn't close enough together to talk any while we hunted for him.

Q. Well, after you got to the body?

A. Well, he talked just like the balance of us.

Q. (Reading.) "Defendant was hunting on his beat just like the rest of us. His conduct all the way through was just like any other man. There was nothing that led me to believe that he knew anything about it." Is that correct?

A. Yes, sir.

Q. That was your statement before and that is your statement now. That is correct, is it?

A. Yes, sir.

Q. Well, lets see now; when you got there you stated these other parties came up soon afterwards. Now, what all did you find there?

A. We found part of his skull and arm bones——

Q. How close was that gun to the body?

A. It was 10 steps, I guess, as near as I can guess at it.

Q. Don't you know it was rather an open place for 20 feet around that body?

182 A. No, sir; it wasn't that far around; close to the road it was tolerable open, and right there close by it it was tolerable open, but back of the body it was pretty thickety.

Q. It was pretty open to the road, from where this body lay to the road. Wasn't it so open that you could at least see a man back there standing up easy enough from the road?

A. Yes, sir.

Q. You didn't observe to see whether you could see a man laying down; you didn't think about making such an observation as that?

A. No, sir.

Q. You saw, however, that right close by where the body was it was pretty thick; is that correct?

A. Yes, sir.

Q. Now, could you tell where the body had been drug out of a more open place by the hogs back to where it was thicker?

A. Yes, sir; we could tell from the papers that was tore up.

Q. They were tore up in a more open place than where the body was?

A. Yes, sir.

Q. You could see from the litter that was made, and where the papers were torn up, and that body had been drug back, after the animals had commenced work on it?

A. Yes, sir.

Q. Well, now, any money found there?

A. Yes, sir.

Q. Parts of 20-dollar bills?

A. Yes, sir; two of them, I think; I am not certain; one of them was a 20-dollar bill, because I could see two "x"s on it.

Q. You didn't probe around with a stick hunting for money, did you?

A. Yes, sir; we looked pretty well; this man told some of them that he had some gold with him, and some silver, and we thought we could find it.

Q. Did he tell that he had a piece of gold and some silver?

A. Yes, sir; he said he had some.

183 Q. He didn't say how much?

A. No, sir.

Q. Just said he had some gold?

A. Yes, sir.

Q. And some silver?

A. Yes, sir; he said he must have had four or five hundred dollars with him.

Q. You think he said that he must have had four or five hundred dollars?

A. Yes, sir.

Q. And you searched around for the money?

A. Yes, sir.

Q. And found these pieces?

A. Yes, sir.

Q. Didn't say how much of any particular coin he had?

A. No, sir; I don't know as he did.

Q. But he had several pieces in gold and silver and paper?

A. Yes, sir.

Q. And he must have had as much as four or five hundred dollars?

A. Yes, sir.

Q. There were papers there also?

A. Yes, sir.

Q. He said, when you found the remains, that he was satisfied they were the remains of his partner?

A. Yes, sir.

Q. You buried him in a coffin?
A. Yes, sir.
Q. What remains you could get together?
A. Yes, sir.
Q. Send and get a coffin?
A. Yes, sir.
Q. Enclosed his remains as far as was necessary, and the best you could under the circumstances?
A. Yes, sir.
Q. There was pieces of different kinds of paper found there with writing on them; several different pieces of paper with writing on them?
A. Yes, sir; some pretty well torn up; some of it was torn up so we couldn't tell much about it.

184 Q. Did it look like a pocketbook, any of it?
A. Some kind of a memorandum book.
Q. That had papers in it?
A. There seemed to be some papers in it besides the leaves of the pocketbook.
Q. Some of the papers looked like the paper that come out of a pocketbook and some like it had come from other paper?
A. Yes, sir.
Q. There seemed to be more than one kind?
A. Yes, sir.
Q. Well, some of it looked like paper that had come out of a book and some of it looked like other paper?
A. Yes, sir.
Q. And that paper was torn around?
A. Yes, sir.
Q. Scattered around?
A. Yes, sir.
Q. Did you notice his writing on any of it?
A. No, sir; I didn't, myself.
Q. Did you notice writing on a piece of paper that seemed to be a bill of sale. Did you hear it spoke*d* of?
A. I don't know as I did.
Q. Did you notice writing there that showed his name, as Steadman's name?
A. I didn't see it myself; I just heard them a talking about it.
Q. Mentioned it?
A. Yes, sir; some of them said it was Steadman's name on it.
Q. You don't know what sort of a piece of paper that was on?
A. No, sir.
Q. What else did you find?
A. Well, that was about all.

185 Q. Well, you say here that you found a match safe and a comb and a pocket knife and what seemed to you to be something to pull hulls out of a breech-loader?
A. Yes, sir.
A. Yes, sir.
Q. Did you find any empty hulls and loaded hulls?
A. Yes, sir.

Q. How many, 15 or 20?

A. I don't think there was hardly that many; I don't know as I can tell you how many hulls, but there were several of them; a few loaded ones.

Q. How many empty hulls; quite a number?

A. Yes, sir; a good many empty ones.

Q. Well, the defendant here made an appointment to meet you and go and hunt for the body, and the next day he did meet there, and acted and talked the same the next day?

A. Yes, sir.

Q. Well, you spoke about his asking you to go with him; of course he told you he was a stranger?

A. Yes, sir; we talked about it considerable.

Q. You explained to him what you thought about it?

A. Yes, sir.

Q. And then he asked you in a general way, after the body was found, as to the proper thing to do, and your advice to him as the proper thing to do, and you told him you didn't know; you told him you wasn't the proper to advise him, and he mentioned to you that he wanted to do the proper thing; you talked to him in regard to this whole matter, I suppose?

A. Yes, sir.

Q. And you told him you was hardly capable of advising him?

A. Yes, sir.

Q. In that talk there, did he tell you at one time that it had been reported there that his partner had gone off with this woman, and that he had heard that report, among others?

A. Yes, sir; I heard him say that several times.

186 Q. And he didn't know anything about it himself?

A. No, sir; he didn't say he knowed anything about it at all.

Q. Did he ask you if you knew anything about it?

A. No, sir.

Q. Well, you say he didn't offer you any money, but this matter about paying you, he told you he would pay you for your trouble in helping him?

A. Yes, sir.

Q. You are a citizen up there by marriage?

A. Yes, sir.

Q. You knew the country and you knew the roads?

A. Yes, sir.

Q. You say that was a bullet hole you saw; about what sized calibre?

A. It looked like about a number two buckshot.

Q. About a 38, didn't it look to be? That is your statement before. Now what size would that be?

A. It ought to be about like a good-sized buckshot.

Q. These Winchesters range all the way from 32 to 44, don't they?

A. Yes, sir; I guess so, sir.

Q. Ordinary rifles; do you know how they run?

A. No, sir.

Q. The Winchesters that are hunted with a great deal are medium size, ain't they; they carry about a 38 that you shoot squirrels with?

A. Yes, sir; I believe so.

Q. Good many squirrels and deer in there?

A. Yes, sir.

Q. Now, in regard to this buckshot; that is your statement that it appeared to be about a 38-calibre bullet that made the hole; is that the way of it?

A. Yes, sir.

Redirect:

Col. CLAYTON. Did you see the man's boots?

A. Yes, sir.

Q. Did you know them?

A. Yes, sir.

Q. That is, were they Steadman's. How did you know them?

187 A. Well, I noticed by him being there several times, and I noticed his boots, because they were made different from any I had ever seen.

Q. How do you mean?

A. They was sewed up this way on each side [indicating, from each side of the toe to instep].

Q. Kind of a tongue sewed on the toe?

A. Yes, sir; and then there was another thing; he had on a pair of pants that I never seen open the way the pockets was fixed.

Q. How was that?

A. Well, on the pockets there was some little fine leather, I guess it was leather, and there was some little brads through the pockets, and it was laced up to hold it stout.

Q. And you found these on the body?

A. Yes, sir.

Q. Steadman wore this kind of pants?

A. Yes, sir.

The COURT. Did you notice the spurs?

Col. MELLETTE. Yes, sir; he has testified as to the spurs.

Col. CLAYTON. You said they looked like those [pointing to spurs]?

A. Yes, sir.

Q. And the pants you knew, and the boots?

A. Yes, sir.

The COURT. Did you examine that piece of skull?

A. Yes, sir.

Q. You looked at that, did you?

A. Yes, sir.

Col. CLAYTON. Look at that piece of skull, and see if that is the piece you spoke of as having the hole in it?

A. Yes, sir.

Q. If that has been buried, it has gotten here somehow?

A. Yes, sir; that is the same piece.

188 Q. When the defendant asked you if you thought the people would suspicion him, how long had the body been buried?

A. Well, that same day.

Q. Asked you to go and see what the people thought about it?

A. Yes, sir; he wanted me to go and see what the white people thought.

Q. What nationality is he?

A. Well, I believe they called him a Spaniard or a Mexican; that is what we called him up there.

(Defendant here starts to make some remark, but is motioned to keep silent.)

Col. CLAYTON. Let him speak, if he wants to say anything.

Col. BARNES. I just motioned him to keep still, because it is not usual for defendants to speak.

Col. CLAYTON (to witness). Parties up there called him a Mexican; passed up there as a Mexican?

A. Yes, sir.

Q. Do you know how he came to pass there as a Mexican?

A. No, sir; I don't know how he come to be.

Q. When he talked to you about the people suspicioning him, he wondered if the "white people" would suspicion him?

A. Yes, sir; he asked me if I would go up to the store and see what they thought about it, and if I would let him know.

Q. Did he say what he wanted you to do?

A. No, sir.

Q. He just wanted you to let him know?

A. Yes, sir.

The COURT. Did you go back?

A. Yes, sir; I went back up there.

The COURT. Did you go back and report to him?

A. No, sir.

189 The COURT. Why?

A. I thought I oughtn't meddle with other people's business.

B. D. MOODY.

Col. CLAYTON. Your name is B. D. Moody?

A. Yes, sir.

Q. Where do you live?

A. In the Creek Nation.

Q. Near Choska?

A. Yes, sir; about 4 miles from there.

Q. Do you remember the day that Mr. Steadman was missing from your country?

A. Yes, sir.

Q. Where were you on that day?

A. I was on the bottom, making boards for William Perryman.

Q. How far from the place where the body was afterwards found?

A. Where my work was, was about 300 yards from where the body was found.

Q. Please state whether you was there late in the evening?

A. I was there until 6 o'clock; until the whistle blowed at the mill for 6 o'clock.

Q. State if you heard any shooting that day, and if so, where and about the number of shots.

A. About five o'clock, as near as I could come at it, I had left the place where I was at work, and had gone down to the slough to get a drink of

water—you have it on the diagram there, I can show you right where I was [taking plat, and designates where he was]. I had left the place where I was at work, and gone down east to the slough, to get a drink of water, and I was coming back, and about 100 yards before I got to my work, I heard some shooting; I judge there was some four or five,
190 probably more; they was in pretty quick succession, and I turned and come pretty near going out to where the shooting was, and I turned and started out that way, and I reckon I walked eight or ten steps; I thought may be the boys were shooting squirrels, and then I thought I would have to go to my work, as I knew it was getting late, and I went on back to my work, and just about the time I got to my work I heard a very heavy gun discharged in the same direction of where the other shooting was, and I didn't think anything about it, only it was somebody, I thought, killing game of some kind, and the reason why I did notice it, there was a Indian friend of mine chasing deer in there that day, and he had run one deer to me, and he had shot at it, and he told me to be on the lookout, he might run another one to me.

Q. You walked about 100 yards after the first shot fired?

A. Yes, sir.

Q. When you heard them?

A. Yes, sir.

Q. In the same place?

A. As near *as near* as I can tell.

Q. Do you know where the body was afterwards found, and how the shooting occurred that day?

A. It was right in that direction.

Q. Now, then, you walked 100 yards; about how long would it be before this firing ceased?

A. Just long enough for me to walk 100 yards; it would be some five or ten minutes, I suppose.

Q. Now then, that was—do you remember what day it was?

A. That was on the 21st of October, the day before the fair.

Q. We had that here in another case; the fair commenced on
191 the 22d; we had that testified to here in the Crumpton case, the Muskogee fair commenced on the 22d of October.

A. Yes, sir; I was here when that case was tried.

Q. Now, Mr. Moody, did you see anybody?

A. No, sir.

Q. Did you hear any other shooting over there except what you have named?

A. No, *sir*; not in that direction; there was shooting all around up there; they hunt game there all the time,; there was no more shooting in there that I heard.

Q. You say you was about 100 yards from where the body was found when you heard this shooting?

A. About 200 yards.

Q. Was there any shooting after that, for a long time after that; say 20 or 30 minutes, or an hour afterwards?

A. No, not in that direction.

Q. From the time the first shots stopped, until the last one fired, you had walked about 100 yards?

A. Yes, sir; I suppose about 10 minutes.

Q. Now, then, did you know Steadman?

A. No, sir, I didn't know him.

Q. Did you know Alexander?

A. I had never seen him at that time.

Q. Did you see him afterwards?

A. I did see him the Sunday afterwards, the following Sunday I saw him at Mr. Orcutt's; him and Jim Bruner rode up there together.

Q. Sam Orcutt's?

A. Yes, sir.

Q. Did you have any talk with him?

A. I didn't; Orcutt did.

Q. What was said?

A. Him and Jim Bruner rode up together and got down, and Orcutt and I was settin' out at the gate, on a stick of wood, and they rode up and they got down, and I think Alexander asked Orcutt—one of
192 them—and I think it was Alexander, asked Orcutt if he had any good apples, and he said he thought he had a few, and he went in the house and got some, and we set there and talked, and he asked Alexander if he had heard of his partner, and he said "Not for certain." He said he had heard there was a man and a woman got on the train at Wagoner, and he says: "I think it was them." They staid and talked a little, and he says: "He can have a good time, and if he has gone with that woman he has got plenty of money with him."

Q. Did he say anything about whose money it was?

A. No, sir; he said he had plenty of money; I hadn't heard anything about the man being missing before that.

Cross-examination:

Col. BARNES. You gave now, as near as you can, what occurred at Orcutt's; he said he would have a good time, for he had plenty of money?

A. Yes, sir.

Q. That was the expression he used?

A. Yes, sir.

Q. He said he had heard a man and a woman had gotten on the train at Wagoner?

A. Yes, sir.

Q. Don't you know that there was such things talked around there; don't you know that there was such things abroad there?

A. I don't know there was.

Q. But you had heard it?

A. I hadn't heard of the man being missing.

Q. You have since that; that such reports were talked around there by Mr. Houses's folks. Do you know that there was some of them circulated that report?

193 A. Yes, sir; I know there was different reports, but at that time I hadn't got hold of this man being missing.

Q. This same thing that Alexander told you and Orcutt he had heard, you afterwards heard the same report?

A. Yes, sir; sometime after that, but I didn't hear it exactly from Alexander.

Q. You heard it from others?

A. Yes, sir; I heard more reports than I would be able to tell.

Q. Of course you heard on the strength of that, that Houses' folks were out hunting for him?

Col. CLAYTON. Never mind that.

Col. BARNES. Now, Moody, did you say it was just after the six o'clock whistle, or just before?

Q. Just before?

A. Yes, sir.

Q. Did it whistle before you got to your work; after you walked that 100 yards, you heard that whistle?

A. No, sir; I had been there at work.

Q. How long?

A. I suppose half an hour.

Q. Was it that long?

A. I suppose it was; the reason, I was there pretty long at work.

Q. It wasn't more than half an hour?

A. I don't know.

Q. Was it half an hour?

A. I think it was.

Q. If it is your best judgment that it was half an hour, why, say so; or if it was 15 minutes, say so, but according to your judgment, you heard the shots, and then from that time, up to the time the whistle blew, it was half an hour according to your best judgment; you don't think that it was an hour?

194 A. I don't think it was an hour; close to that.

Q. If it was only half an hour, it wasn't close to an hour. When you give it as half an hour you give that as your best judgment. Is that your best judgment?

A. I worked about half an hour.

Q. Then stick to it, if that is your best judgment?

A. Let me explain that ——

Q. No, no; was it?

A. I say it took me about five minutes to walk to where I was at work; five or ten minutes.

Q. Now, was it half an hour?

A. And then I worked about half an hour before the whistle blew.

Q. You might just as well double that. You give it as your best judgment. You don't know the time it was?

A. I don't know the time.

Q. Your best judment is that it was half an hour after you heard the shots until the whistle blew?

A. Something like that.

Q. You heard four or five shots in quick succession, and then you walked as much as 100 yards, which took you from five to ten minutes—I believe I will double that—it took from five to ten minutes for you to walk 100 yards, and then you heard another big shot. You were paying attention to the shots because an Indian friend of yours was in there hunting deer, and had run one through there. It would seem from one of your answers to the district attorney that you did hear some other shots, when he was asking you if you heard any other shots within a short time. Did you that evening hear some other shots?

A. Not that I recollect of.

195 Q. Why was it you answered you didn't hear any other shots within 20 or 30 minutes; that would rather imply that you did hear some other shots; were they just before, or just after?

A. I didn't say I heard any that evening.

Q. I was only judging from the peculiarity of your answer, that was all. You don't think you heard, you don't believe, any other shots that evening after that at all?

A. There was shooting around in the other directions through the day, but I didn't say I heard any other shots after that shooting that evening.

Q. I believe you say you were working three or four hundred yards from where the body was found?

A. Yes, sir.

JIM BRUNER—Recalled.

196 Col. CLAYTON. On the day that those two men left together, the day Mr. Steadman was missing, do you know whether or not they had guns with them when they went off?

A. Yes; he had his gun.

Q. Did Alexander have a gun?

A. He had mine.

Q. Do you know how the gun was loaded.

A. He came in the house that morning, and sat in the house by the fire, and squatted down and loaded his pistol.

Q. Do you know how the gun was loaded?

A. Yes, sir; first he asked me was the gun in good fix. I told him the right-hand barrel was a little out of fix, but the left-hand barrel in good fix; he went to work and loaded with his balls, it looked like—I would call them not exactly a blue whistler—a little larger than buck shot.

Q. Load both barrels?

A. Yes, sir; one with fine shot, and the other with buck shot.

Q. What barrel was the fine shot loaded in?

A. The bird shot in the left hand barrel, and the right hand barrel with buck shot.

Cross-examination:

Mr. BARNES. That was Monday morning?

A. Yes, sir.

Q. The first time you were on the stand, you told about Mr. Steadman coming there and borrowing the gun for his partner?

A. Yes, sir.

Q. And about telling him just the condition of these two barrels?

A. Yes, sir.

197 Q. Didn't you, in your testimony before, as far as borrowing the gun was concerned, claim that it was Mr. Steadman that got it?

A. He got it twice, and the last time Alexander borrowed it.

Q. You notified Mr. Steadman in the first talk as to the condition of this gun, the right-hand barrel being a little out of fix, and he went through some questions?

A. Yes, sir.

Q. And you told him, and he loaded it in accordance. Do you want anybody to believe that this man had been carrying the gun on different occasions before that—Alexander?

A. Mr. Steadman borrowed it; I don't know who carried it.

Q. You observed exactly the kind of shot he put in—how much mustard shot he put in one and blue whistler in the other?

A. Yes, sir.

Q. And he took your shot in one hand and his in another?

A. He did; he was squatted down this way, and I was standing right over him with the sack in my hand.

Q. Which did he put the most powder in?

A. I gave him a charge; I don't know.

Q. Which one did he kill ducks with when he was out?

A. I don't know; the barrel snapped once or twice, but it would go off, and after I told him de good from de bad he loaded the left hand sufficient.

Q. And you told Mr. Steadman before that?

A. Steadman had started——

Q. Have you ever been down here before?

A. Yes, sir.

Q. What were you here for?

A. He stole a yearling.

Q. That ain't the only thing?

A. I was down on two charges.

198 Q. What was the other charge?

A. Joe Barnes shot at me; he was meddling with me, and I took de law on him.

Q. Were you down here for whiskey?

A. No, sir; I make enough cotton widout peddling whiskey.

Q. You deny being the man?

A. I don't deny being a man.

Q. Both times you were here you were swearing against a fellow?

A. Yes, sir.

Q. How often have you been down?

A. I don't know.

Q. I will ask you if what you swore was honest swearing?

A. I told the truth; they went over the road. When a man cotch me stealing they can take me—not before. Whenever I commence to steal den I am liable to de law like de balance; den if de cotch me and prove it on me, I'm cotched.

Q. Mr. Steadman said both times when he was borrowing that gun, he was borrowing it for his partner?

A. Yes, sir; and he took it down and looked as it, and worked the trigger, and he said, "I can soon fix that."

Q. The next time he came he borrowed it for his partner again?

A. Yes, sir.

Col. CLAYTON. You were never down here charged with any crime?

A. No, sir.

SAMUEL A. ORCUTT.

Col. CLAYTON. Do you know this defendant?

A. Yes, sir.

Q. How far did you live from where the body of Mr. Steadman was found?

A. About a mile.

Q. What direction?

A. West.

199 Q. Towards the store?

A. Yes, sir.

Q. How far did you live from Lipscomb's store?

A. About three miles; it may be three and a half.

Q. West of the store?

A. No; west from our house to the store.

Q. What direction did you live from where the killing occurred?

A. East about a mile; and three from the store.

Q. That would make the killing about two miles from the store?

A. Yes, sir.

Q. Do you know Alexander, the defendant?

A. Yes, sir.

Q. I will ask you if you heard of him at your father's house at any time after Mr. Steadman was missing, and before he was found, make any statement in regard to the matter?

A. Yes, sir.

Q. What was it?

A. He come up there; we were all in the house; he came to the yard gate and hollered helloo. Some of them went out—father went out, and I went out. He wanted to know if we seen anything of Mr. Steadman, his partner. My father told him he hadn't. He went on talking. I can't recall all he said; he told about where he last saw him. He said they were going along this big field, and he kind a hesitated a minute and my father said "Meagher's field?" He said "yes; and Steadman says you take my horse to camp and I will go through here and see if I can kill a deer.

Q. Was there anything said about money?

A. He said he had taken all the money they both had.

Q. How come he to say that?

A. I don't remember; there was something about this woman; I don't remember anything he said about it.

Q. Did you see the bones of the deceased?

A. Yes, sir.

200 Q. Do you know what become of the skull bone?

A. Yes, sir; I brought it down here.

Q. What become of them, in the first instance?

A. They were buried.

Q. Who took them up?

A. I did.

Q. And brought them down here after they were buried?

A. Yes, sir.

Q. [Showing bones to witness.] Are those them—the ones you brought here?

A. Yes, sir.

Q. Where did you find those?

A. About 40 or 50 yards, I suppose, from Meagher's fence, near the northeast corner of the field.

Q. Were you present when the body was found?

A. No, sir.

Q. Who was with you when it was taken up?

A. Sam House, and father, and a man by the name of Burnett.

Q. Were they all present when it was found?

A. No, sir.

Q. Who showed you where it was buried?

A. Mr. House.

Q. You took it up and brought it down here?

A. Yes, sir.

Q. It is in the same condition you found it in?

A. Yes, sir; there is one thought isn't here—the hat.

Q. Was that buried with him?

A. Yes, sir.

Q. And you took that up [showing hat], is that the hat?

A. Yes, sir.

The COURT. Was the top of it torn out that way when you found it?

A. Yes, sir.

Col. CLAYTON. I will introduce the hat in evidence. (To witness.) Do you know whether defendant carried a pistol or not?

A. Yes, sir; he had a pistol that day he came to our house; he had it right down in his pants on the side. I seen it another time when he was arrested; he had it in the same place.

201 Q. Were you present when he was arrested?

A. Yes, sir; on his left side; it was a cap and ball pistol.

Q. Do you know the size?

A. No, sir, I don't; I would judge it to be about a 44, though.

Mr. BARNES. Don't you know it was a 44?

A. No, sir.

Q. An old-fashioned navy pistol?

A. No, sir.

Q. Don't you think it was a 38?

A. I don't know whether it was a 38, 44, or 45; it might have been a 22 for all I know.

Q. How often had you seen it?

A. Twice.

Q. You had observed it each time?

A. Yes, sir.

Q. Where was it the first time you saw it?

A. Right down here.

Q. You saw the handle of it?

A. Yes, sir.

Q. Didn't you see any more of it?

A. Yes, I seen as far down as the cylinder; I could see it was a cap and ball.

Q. Was it in a scabbard?

A. No, sir; just right down his pants.

Q. Are you going to be so reckless as to say it was a 22, as far as you know?

A. I told you I judged it was a 44.

Q. But as far as you know, you said it might have been a 22. If you answer that way you might be equally as reckless about anything else. In regard to this talk there at the gate; were you at your father's house?

A. No, sir; it was outside of the gate.

Q. You were all on the outside?

A. Yes, sir.

Q. Didn't he say in that conversation that both of them at the time this man disappeared had money?

A. He might have meant that, but he said his partner had taken off all the money they both had.

Q. Don't you know that in your cross-examination before the commissioner you said that this defendant in that conversation
202 brought it in that they both had the money; he brought in in that way that they both had the money?

A. Well, don't that way look like——

Q. No.

A. He said he taken all the money they both had.

Q. He brought it in they both had money?

A. I say it yet.

Q. You can recollect this well enough to give it word for word as he said it?

A. He said his partner had taken all the money they both had.

Q. He couldn't if they both had money at the time?

A. Well, that is the way he said it.

Q. You don't undertake to say you recollect everything as he said it?

A. I recollect that part of it just as he said it; I can't say every word.

Q. What was said just before this?

A. I don't know.

Q. What was said just after?

A. I don't know.

Q. You can't remember what was said just before or after. Now, who was the man brought up the subject about his partner being missing?

A. Alexander.

Q. And he was looking for him?

A. Yes, sir.

Q. When he was talking to you within a mile of the place where the remains were found. This was about three days after?

A. Yes, sir; about.

Q. Something was said about a woman at that time?

A. Yes, sir; as well as I remember that is what brought up the subject about the money, the talk about the woman.

Q. You can't remember what was said just before or after; they
203 were talking about the man being gone and the woman being gone, and about his having money?

A. Yes, sir; he said he taken off all the money both had.

Q. Did you not say before the commissioner you could not give it word for word?

A. No.

Q. But that he brought it in that they both had money?

A. That is what he said—that his partner had taken off all the money both had.

Q. How come he to say that? Didn't he say his partner had plenty of money?

A. No, sir; he never used that expression there.

Q. You are absolutely certain he didn't say his partner had plenty of money?

A. No, sir.

Q. You heard all he said?

A. I don't remember all he said.

Q. You were right there?

A. Yes, sir.

Q. You were there when the subject came up, and when it ended?

A. Well, part of the time I was there, and part of the time I wasn't; it was right there in the lane; him and father was talking.

Q. He told about his partner being gone. You staid until that part was over.

A. Yes, sir; but they were still talking about it.

Q. All you know about it is what you heard him tell your father?

A. Yes, sir.

Q. You were interested in the subject enough to listen to it. Did he tell there when the woman was mentioned, that his partner and this woman had been heard of over at Wagoner—reported he had been seen there?

A. He told that Sunday, after he came back there.

Q. Did you hear him tell it the first time he came there?

A. No, sir.

204 Q. Was Bruner with him?

A. He was there the second time he came.

Q. How often was he there altogether?

A. Twice when I was there.

Q. The conversation you heard him give was in the road. Where was the other time?

A. In the barn lot.

Q. Who was there at that time?

A. My father and old man Moody, and him.

Q. What did he say that time?

A. I don't remember. I didn't go out until they had talked a right smart little bit.

Q. Was Jim Bruner there?

A. Yes, sir.

Q. Did Jim hear all was said?

A. He might if he listened.

Q. Who was with him the first time he was there?

A. He came there by himself.

Q. Don't you know this man was never at your house but three times, and two of these times he was there with Mr. Steadman?

A. He was there twice; Mr. Steadman wasn't with him that I know of.

Q. Was he there with Mr. Steadman?

A. I don't know; I never saw him there with Steadman. My father said they both came there.

Q. Was he there twice with him?
A. I don't know.
Q. Was he ever at your house but three times?
A. I don't know; I only seen him twice.
Q. You heard of his being there with Steadman, but you never saw him?
A. No, sir.
Q. After this man was said to be missing, how long after the first time until you saw him the second time?
A. About three days after the man was missing the first time.
Q. And said he was looking for him?
A. Yes, sir.

Q. That would be along about the middle of the week, provided
205 the man was missing the first day of the week?

A. Yes.

Q. He was there, then, the next week with Jim Bruner?
A. No; he was there the first Sunday after the man was missing and about three days after the man was missing, and Sunday he came again.
Q. Do you know how long that man was missing before his remains were found?
A. I think it was about two weeks.
Q. How long after he was there with Bruner, on Sunday, until his remains were found?
A. I think it was the next Monday—I ain't certain—or it might have been the next Monday a week; I ain't certain when he was found; I know it was somewhere about two weeks after he was missing until he was found.
Q. Then if this man was there two or three days after and the next Sunday with Bruner, then you think it would be Monday week after that when the remains were found?
A. Yes, sir.
Q. Was he there any more after he was there with Bruner on Sunday before he was found?
A. No, sir.
Q. In regard to these things, you say you had something to do with bringing them down?
A. Yes, sir; I brought them pieces of skull and that hat.
Q. Where did you get it?
A. Out of the box where Steadman's remains were buried?
Q. You got them yourself?
A. Sam House and father and Mr. Burnett was along.
Q. And you brought them down?
A. Yes, sir; I was told by Heck Thomas to get them pieces.
Col. CLAYTON. The deputy marshal told you to get them pieces of skull?
A. Yes, sir.

206 A. D. ORCUTT.

Col. CLAYTON. Where do you live?
A. At a place called Choska.
Q. Do you know the defendant?

A. I have seen him a few times?
Q. Did you ever see him before Mr. Steadman was missing?
A. Once.
Q. Where?
A. At my house.
Q. Was Steadman with him?
A. Yes, sir.
Q. What was their business at that time?
A. They called to see me about some corn and let me know they had some horses to trade. They also spoke about they would probably like to rent some of my farm for this year.
Q. After Mr. Steadman was missing—do you remember when he was missing?
A. I remember it.
Q. After that, did you see this defendant?
A. He came to my house once after that.
Q. Did you have any talk with him?
A. Yes, sir; a short conversation. I believe, sir, it was on Friday after the Monday. I think about Monday is when he said the man and woman was missing. I think it was on Friday afterwards——
Q. Was he by himself that time?
A. Yes, sir; when he came to my house the last time.
Q. What conversation did you have with him?
A. Some of the children said "Pa, there is a man out at the fence wants to see you." I went out and I says "Good morning." He says "You have not seen anything of my partner about here, have you?" I says "No, sir." I says "Is your partner gone." He says "Yes; they say he skipped out with a woman the other night." I says "That's bad." He said "You have not heard anything of him?" I said "No, sir."
207 He said "I have not heard anything about him since that evening he was missing." In the mean time I heard a rumor about a man being gone with a woman down in the bottom, and it was one of the horsemen, but I didn't know which one, and I talked then with the defendant something or other about it. I asked him if he didn't think it strange that a strange man would come there into the country, and run off with a strange woman in that kind of a way. Well, he said, it didn't seem improbably to him, because out at Oklahoma where they were, that his partner had left him there once before, and was gone, I believe he said, something like a couple of weeks. He said "I got uneasy about him and went after him and found him with a real estate man looking at claims. I says to him 'You hadn't ought to go off and leave me that way.' He said 'I am 30 years old, and I ought to know my business;' and I didn't say anything more to him, and I have not since that questioned anything he would say." I says then "Where did you last see your partner?" He says "We were going along down by the side of this big field—" and he kind of hesitated. I says "Meagher's field?" He said, "Yes, sir; we were going down by the side of that field, and he says, 'Alexander, you take my horse to camp, and I will go through this field and see if I can get a shot at a deer.'" He says "I took his horse and went to camp, and night come and my partner didn't come," and he said, if I remember right "Somebody was passing there in the night, but,

however, next morning there was a man come and he said he claimed to be hunting a sorrel dun mule" or something of that kind—it was a queer kind of a mule—" and he asked me if my partner had come home?" I told him "no;" and he said: "He looked at him as much as to
208 say 'it is a curious thing you don't know anything about your partner.'" And he said "He just passed off that way." I says: "Have you ever looked or searched around for your partner?" He said, "Yes, I have been looking to-day," I heard somebody shooting over in that big field, and I understood him to say he went over there, and the man had shot a squirrel, and it had lodged and he was trying to shoot it out. He said he came on over towards the slough, and he inquired of that man, and he said that man hadn't seen anything of his partner. Then he went over and there was a man coming out of the timber, and he asked him if he seen anything of his partner, and he said he looked at him very suspicious, as much as to say, "It is a very curious thing you don't know your partner has gone off with this woman." He said they didn't seem to believe anything he told about the man. And I believe that is about all the talk we had in regard to the matter.

Q. Did he say anything about money?

A. Well, after the conversation was over in regard to the man, he spoke something or another about "My partner took off all the money we both had;" or, he might have said, "About all."

Q. That is the version he gave you of that matter?

A. Yes, sir.

Q. Was the defendant armed at that time?

A. Well, the conversation took place just on the outside of my yard fence, and we were all kind of squatted down, at least him and I was, and my boy Gus, was kind of over from us by a tree, and when he raised up, he kind of turned around, and fixed his coat behind, he had on a short, overall coat, and I saw the breech of the pistol, and the cylinder part, in his pants. I don't know which side it was on.

209 Cross-examination:

Col. CRAVENS. Was that when Mr. Moody was present?

A. No, sir; when he come there, when Moody was present was Sunday. I believe he was there on Friday—him and Bruner.

Q. Were you examined before the commissioner?

A. No, sir.

Q. Had this defendant been at your house before?

A. Yes, sir; once before, he and Bruner.

Q. This time you spoke of, is when he came alone?

A. Yes, sir.

Q. What sort of a horse was he riding?

A. I don't believe I can tell you.

Q. In his short sleeves, or a coat on?

A. Coat on; this short overall coat.

Q. Was that a 44 pistol?

A. I couldn't tell; I could just see the handle of it, and the cylinder part; it looked to be an old pistol, but I couldn't tell you.

Q. A man living to your age, and living in your country, ought to know enough about arms, it seems to me, when you see the handle and cylinder, that you could tell something about the size?

A. I can tell you what it looked to me; it looked to me like the pistol we used to use in the Army, when I first went into the U. S. Army, one of these old cap and ball, I guess they were 44 calibre; it looked to be something that size.

Q. That is what I want you to tell me. That is the kind of a pistol you took it to be.

A. Well, yes, sir; I expect it was that kind; I only just seen what I told you.

Q. You saw the handle and cylinder?

A. Yes, sir.

Q. A man who had been in the Army 25 years ago ought to know an old-fashioned navy pistol as far as he could see it?

A. That was the first kind I got.

Q. You ought to know. 25 years ago you did not need to see anything except the handle and cylinder to know it?

210 A. That's about all.

Q. Well, that is what he had; he had a 44 old-fashioned navy pistol?

A. I would take it to be from what I seen; he didn't have it outside, you know.

Q. You didn't charge your memory with the exact language, word for word. Of course, you have given it the best you can remember?

A. Yes, sir.

Q. With reference to this thing about his partner going *off*. Didn't he say it was reported he was gone off with this woman, and that he had taken his money with him, or the most of his money?

Q. He said: "They say he is skipped out with a woman."

Q. And he didn't say he had taken his money with him?

A. Well, at the wind-up——

Q. Or, that he had plenty of money?

A. No, he didn't say "plenty of money." He said his partner "had taken all the money", or "about all the money they both had."

Q. Ain't you mistaken about that? Didn't he say his partner had plenty of money?

A. The next Sunday he did; he said he had plenty of money with him. He was up there again, if I am correct.

Q. Do you know the day of the week?

A. I am not very good on dates, anyway. Very often I have to inquire about the day of the month. I am careless in that respect.

Q. How long was it between the two times he was there last? Was that the last time he was there, when Moody was there?

A. Yes, sir. I think he was there on Friday; he was there on Sunday. He came up there again with Jim Bruner.

Q. The time he came with Bruner, Moody was there?

A. Yes, sir.

Q. Did you say it was Sunday?

A. The next Sunday following the day he was up in the week.

211 Q. How long after that was it before you heard of these remains being found?

A. Quite a little while after; it must have been a week or ten days; maybe a little longer.

Col. CLAYTON. Do you remember how long it was from the time Mr. Steadman was missing, until the body was found?

A. No, sir; I couldn't give you the correct time.

PLEASANT MCELHANEY.

Col. CLAYTON. Do you know the defendant?

A. Yes, sir.

Q. Did you ever have a conversation with him or hear him talk about the disappearance of Steadman after he was missing?

A. I heard him speak about his partner after he was missing.

Q. How long afterwards?

A. Four or five days.

Q. Who was he talking to?

A. I and Sam House.

Q. Sam House had the woman, who left him?

A. Yes, sir; he asked House if he heard from his wife, and Sam said "No;" then Sam asked him if he heard from his partner, and he said he heard nothing from him; he said, "I know my partner is dead, or he would write to me."

Q. That was four or five days afterwards?

A. Yes, sir.

Cross-examination:

Mr. BARNES. Have you not got this turned around; wasn't House the one who opened the conversation?

A. No, sir; this man asked House if he heard from his wife first.

Q. Didn't House first ask if he heard from his partner?

A. No, sir.

Q. And didn't he say "No;" then didn't he ask House if he heard from his wife, and House answered, yes, he heard from his partner and wife, too, and heard they had both taken the train?

A. No, sir.

212 Q. Wasn't that the conversation?

A. No, sir.

Q. Do you live at Choska?

A. Yes, sir.

Q. Do you work in that store there?

A. No, sir.

Q. Are you any kin to House?

A. No, sir.

Q. What is your business there?

A. I farm.

Q. Did you hear House, in that conversation, make any threats?

Q. No, sir. Well, I heard him——

Col. CLAYTON. Is that after the killing?

Mr. BARNES. Yes, sir.

Col. CLAYTON. Then never mind.

The WITNESS. It was after the man was missing.

Col. CRAVENS. Well, they were not hunting for the man and woman?

A. I don't know whether they were hunting for them or not then.

Mr. BARNES. Who was present?

The COURT. I don't think it is competent.

Mr. BARNES. You had heard a conversation, did you, after this, after Steadman was missing?

A. Yes, I heard some speak about it in a few days after he was missing.

Q. Who was present when Sam was talking?

A. Mr. Goings and Gus House and myself.

Q. Is he the husband of the woman was missing?

A. No, sir. Sam House was the man.

Q. Where was that?

A. We were putting up a yard fence, I an' Sam and Gus and this man Goins; that is, a paling fence around the house for Charley Stewart.

Q. Were those parties armed at the time?

A. No, sir; not that I know of.

213 Q. Did you see them at any time armed there?

A. No, sir.

Q. This was a day or two after this man Steadman was missing?

A. Yes, sir.

Q. The conversation you speak of was between this man and Sam House?

A. Yes, sir.

Q. I want to ask the question—of course the court can rule it out if it wants to—if in that conversation you heard Sam House speak in reference to this woman and Steadman, and make threats against Steadman?

Col. CLAYTON. I object.

The COURT. Yes, it is incompetent.

Col. CRAVENS. Where was that conversation?

A. There at the store.

Q. A day or two after the disappearance?

A. Yes, sir; a few days.

MRS. GEORGIE HOUSE.

Col. CLAYTON. What is your name?

A. It is Lipscomb now; it was House before.

Q. You were Sam House's wife?

A. Yes, sir.

Q. Do you remember where you lived last October, just before you left up there?

A. I don't know whether we lived here in October; I guess we did move from here to Muskogee in October.

Q. Didn't you live at Lipscomb's store?

A. Yes, sir.

Q. Do you remember when you went there?

A. I don't know what day it was.

Q. What part of the building did you live in?

A. Upstairs, over the store.

Q. State whether you left your husband while there.

A. Yes, sir; I did.

Q. Where did you go to?

214 A. I went to an old man named Uncle Isom Card.

Q. How far was that from the place?
A. Not very far; it was in sight.
Q. Do you know Mr. Steadman?
A. No, sir.
Q. Did you ever have a talk or conversation with him?
A. No, sir; I never did.
Q. Did he leave with you?
A. He positively did not; and do you want me to stick up my hand and swear it? I went off alone.
Q. Did he have anything to do with your leaving?
A. Not a thing; I never heard of him.
Q. When you left, how did you get your trunk?
A. It was upstairs, over the store, and I pulled it down the stair-steps.
Q. Took it down yourself?
A. Isom and me took it down; he pulled and I pulled.
Q. What did you do with the trunk?
A. I just set it down on the outside on the ground, and I left. I went down to his house.
Q. How long did you stay there?
A. Only just long enough to get on a horse.
Q. Where did you go then?
A. I went to an Indian's house by the name of Lewis; Lena Lewis is the lady.
Q. How long did you stay there?
A. I staid upstairs until pretty near daylight, and I staid in the cotton patch next day.
Q. Where did you go from there?
A. I went to the train; I flagged the train; I wasn't at no station; it was this side of Wagoner; there is a section house there.
Q. Then where did you go?
A. To this place.
Q. How long did you stay here?
A. I come here on Thursday or Friday, I declare I don't——
215 Q. How long did you stay here?
A. I left here Sunday morning and went to Little Rock.
Q. Where you now live?
A. Yes, sir.
Q. Did you pay Lena Lewis anything?
A. I sold her a dress.
Q. For how much?
A. Four dollars.
Q. What did you do that for?
A. For to get money to go on the train.
Q. Who took you to Gibson?
A. I went through Gibson.
Q. Who took you there?
A. Lena herself.
Q. You say Mr. Steadman had nothing to do with your going away?
A. He never had. I never knew there was such a man born in the world.

Cross-examination:

Mr. BARNES. You say you went to an Indian's by the name of Lewis?

A. I went to Card's first, and from Card's to the Indian's.

Q. Did Card go with you?

A. No, sir. I don't know what the man's name was went with me.

Q. It wasn't an Indian you went to; it was George Lewis?

A. No, sir.

Q. A colored man here?

A. No, sir; it was a man that taken me. I don't know whether he lived at his house or not. I went to Card's and some man, I don't know who it was——

Q. You don't know whether an Indian or a colored man?

A. No, sir.

Q. From Card's?

A. Yes, sir. Then I went to Lewis's, and that is an Indian, or they said he was.

Q. Did you see him?

A. I saw him just by nightlight; I couldn't tell.

Q. Did he look like an Indian?

A. Right smart like an Indian.

216 Q. Wasn't it George Lewis, this colored man here?

A. I don't know.

Q. Is Lena Lewis a yellow woman?

A. Yes, sir.

Q. George looked like an Indian, did he?

A. I didn't say he looked altogether like an Indian at all.

Q. A Choctaw Indian?

A. I told you I saw him by dark; I wouldn't know the man now, if I was to see him.

Q. What color was he?

A. He was black.

Q. Did he look like an Indian?

A. I didn't say he was an Indian.

Q. Still, it was George Lewis, colored?

A. It was Lena's husband.

Q. You staid upstairs there?

A. Yes, sir.

Q. You staid out at night, and in the cotton patch all day. Then who took you to the train?

A. Lena and her brother-in-law.

Q. What is his name?

A. Her husband's brother; it was his team.

Q. You staid in Lewis's cotton patch. How many acres in it?

A. I don't know.

Q. Are you divorced from House?

A. Yes, sir; he got a divorce from me.

Q. How do you know?

A. Because the clerk told me.

Q. What clerk?

A. The circuit clerk, in the new courthouse here in this town.

Q. You say you came down on Friday and went to Little Rock on Sunday?

A. Yes, sir.

Q. Have you staid there ever since?

A. Yes, sir.

Q. How could you get a divorce here, then?

A. Well, he done it just the same.

217 Q. How do you know?

A. Because the clerk told me so, and didn't I see it in the paper that he got it?

Q. Did he serve any papers on you?

A. No; he advertised.

Q. Do you know what he swore to, to get the divorce?

A. No, sir.

Q. Do you know how he could get a divorce from you here when he was living in the nation?

A. I don't know; he got it.

Q. That is what you have been told?

A. Yes, sir.

Q. And he got it without serving any papers on you?

A. Yes, sir.

Q. And you at Little Rock?

A. Yes, sir; if he served any on me, I never got them.

Q. What business are you engaged in at Little Rock now?

A. I am engaged in domestic affairs; I sew and cook and iron and anything I am able.

Q. Anything else?

A. No, sir; I don't make my living disrespectable.

Q. Sure of that?

A. Yes, sir; I am sure of it.

Q. Do you know on what ground he got the divorce?

A. I don't know; I heard right here there was parties made drunk on purpose to swear lies.

Q. It was said by the district attorney that was the way you made a living. You deny you made your living in that way in whole or in part?

A. Yes, sir; I have not made my living dishonest.

Q. You have been guilty of no dishonest conduct?

A. No, sir.

Q. Of any kind?

A. No, sir.

Q. Before you were divorced, or since?

A. No, sir.

Q. Then you are a terribly injured woman?

A. Well, just like stories.

218 Q. If anybody swears you were in that sort of business, you deny it.

A. I never in my life; I lived in this town.

Q. What did you slip off from your husband for?

A. He and I couldn't get along, and I just didn't think need take it all because he and I didn't agree.

Q. He accused you of these things?

A. He didn't to my face.
Q. He did behind your back?
A. I don't know.
Q. What did you fall out about?
A. Because I didn't think he done like he ought to do.
Q. Then it is all a mistake about you being in that sort of business?
A. That's what it is. Maybe you think it ain't.
Q. I am in hopes it is a mistake?
A. Well, you just better ought to know it, or you will find it out.
Q. Got a pistol about you?
A. No, sir.
Q. You might have talked to a good many men in your life you don't remember?
A. Any one I remember and knew, I would remember it.
Q. You staid at Lipscomb's store?
A. Yes, sir; right over the store.
Q. Do you remember talking out of the windows to people?
A. I never said a word out of the window in my life there but once and that was to one woman, and I told her not to put my child on the horse.
Q. How many children have you up there?
A. Four.
Q. One of them married?
A. Yes, sir.
Q. You say you never talked to Mr. Steadman?
A. I never did; I never saw him in my life. They said to-day that that was him that I hollered to Aunt, not to put the child on the horse, but I never noticed the man.
219 Q. You may have talked to a man that did put your child on the horse there?
A. I never done it.
Q. But you hallooed at him?
A. I hollered at the woman.
Q. Did you halloo at him?
A. No, sir.
Q. And have quite a conversation with him?
A. No, sir; I never said a word to him.
Q. Was it on Sunday before you left that you hallooed at somebody?
A. Yes, sir; that I hollered at Ann Fletcher not to put Monte on the horse.
Q. And you say they say that was Mr. Steadman at that time?
A. Yes, sir; I was told that to-day.
Q. It was Mr. Steadman that had the horse?
A. Yes, sir.
Q. Might you not have opened a conversation there and you not remember it?
A. What do you take me for?
Q. You couldn't remember everything?
A. Yes, I would; I never done it.
Q. You were trying to get away from there?
A. I know I was, and I got away.

Q. I don't insinuate it was disrespectful to talk to him when you got a colored man to get you away?

A. Oh, yes, but I would remember it.

Q. You would have talked to anybody that would have taken you away?

A. Well, I didn't talk to him.

Q. There was some man there on a horse and you hallooed to a woman not to put the child on the horse?

A. Yes, sir.

Q. And you were told here to-day that man was Steadman?

A. Yes, sir.

Q. Didn't you talk to him and didn't you tell him—did you not talk to him once before that?

A. No, sir.

220 Q. Did you talk to him about the back stairs?

A. No, sir; nor the front stairs either.

Q. Did you not have a conversation with him there in which he said he was going away, and you asked him to take you with him?

A. No; I never done it.

Q. I just want to know whether or not there was such a talk as that?

A. There wasn't a word of it.

Q. If there was such a talk as that we want to prove it.

A. Yes, but you will never do it.

Q. The nearest to such a conversation was, you spoke to a woman about putting your child on the horse that some man had there, but you had no conversation with that man?

A. Not a word; not a word.

Q. Where did you stay when you were here?

A. Up at Mrs. Davis's; I would like you to go up there and I will show you where I staid. It is denied I staid there.

Q. Where have you been staying at Little Rock?

A. At Mrs. Burnett's and Mrs. Bilburn's.

Q. What is Burnett's first name?

A. Micky.

Q. Where does she live?

A. In Argenta.

Q. Where did she live in Little Rock when you staid there?

A. I said she was fixing to leave Little Rock and she moved out to the edge of it and now she is in Argenta.

Q. Where was she first—what street?

A. I could'nt tell you.

Q. How long did you stay on that street?

A. She lived there quite a while.

Q. How long did you stay on that street?

A. She moved right away.

Q. When she moved out to the edge of the town where did she move to?

A. Up on the side of the Fort Smith Railroad.

221 Q. Is she a married woman?

A. Yes, sir.

Q. How long did you stay with her?

A. About 2 months.

Q. Then when she went to Argenta, where did you stay?
A. I am staying with her now.
Q. Did you stay with her all the time?
A. Not all the time; I staid with Mrs. Kilburn; she is living on North street.
Q. Do you know the number?
A. 1314.
Q. Who else did you stay with?
A. I can't think of the other gentleman's name; I didn't stay there but a week, though I can't call his name.
Q. Anybody else?
A. With a widow lady, Mrs. Lewis; that was on Second and Bird.
Q. Then you staid four or five places besides Mrs. Burnett's. Any other place?
A. I can't call that man's name; he is in partnership with Mr. Dooly; he has got a grocery store.
Q. You deny these rumors?
A. Yes, sir.

(Adjourned until 7.30 p. m.)

222 *Night session.*

JUNE 18, 1890—7.45 p. m.

IVERSON CARD.—Recalled.

Col. CLAYTON. Your name is Iverson Card?
A. Yes, sir.
Q. Mr. Card, do you know Mrs. House?
A. Yes, sir.
Q. If you assisted her in getting away or running off from her husband, tell the jury what you did.
A. I holped her tote her trunk.
Q. Where did you take her trunk from?
A. From the store.
Q. She was living upstairs?
A. Yes, sir. I didn't know her then; I didn't know who she was; I didn't get any words with her.
Q. You helped her take her trunk; where?
A. Down about 200 yards; maybe a little over there, 300 yards.
Q. To your house?
A. Yes, sir.
Q. Where did she stay that night?
A. At George Lewis's.
Q. How far did he live from you?
A. About 3 miles.
Q. What became of her trunk?
A. The next day she came up and got it.
Q. That is the last you saw of it?
A. Yes, sir.
Q. That is the night Steadman was missing?
A. Yes, sir.
Q. Did you see Steadman that night?

A. No, sir.
Q. Didn't see anything of him?
A. No, sir.

Cross-examination:

Col. BARNES. You say George Lewis came and got the trunk
223 the next day.

A. Yes, sir; I think it was the next day; I know it was, in reason.
Q. In the daytime?
A. Yes, sir.
Q. People all around there looking for her then?
A. Well, they did.
Q. They looked for her up there around your house?
A. Yes, sir.
Q. Didn't find the trunk?
A. No, sir.
Q. Where did you have it?
A. It was down there in a little patch there.
Q. You didn't have it in the house?
A. No, sir.
Q. You didn't go with her any further than your house?
A. No, sir.

GEORGE LEWIS.

Col. CLAYTON. Your name is George Lewis?
A. Yes, sir.
Q. George, how far do you live from the store—Lipscomb's store?
A. I guess about two mile'.
Q. Do you know Mrs. House?
A. Yes, sir; I have seen her.
Q. Did you see her on the night that she left home?
A. Yes, sir.
Q. Where?
A. At my house.
Q. Did she come there?
A. Yes, sir.
Q. Did you take her there or did she come by herself?
A. An old man by the name of Calvin Powell brought her there.
Q. Colored man?
A. Yes, sir.
Q. What time did she get to your house?
A. He brought her there on horseback?
Q. What time did she get there?
224 A. I couldn't tell exactly what time.
Q. About what time?
A. I guess about 7 or 8 o'clock.
Q. After dark?
A. Yes, sir.
Q. What became of her after that?
A. Well, she staid there until Tuesday morning, and then she got in

my wagon and I brought her down to Marshaltown, to town; me, myself, and my wife took her down.

Q. What is your wife's name?

A. Lena.

Q. How long did she stay there; do you know?

A. My wife took her to Gibson the next day.

Q. What time was it your wife took her to Gibson?

Col. CRAVENS. Were you there?

A. I went to Muskogee.

Col. CLAYTON. Your wife is here?

A. Yes, sir.

Q. What time did you go to Muskogee?

A. Wednesday morning.

Q. What did you go to Muskogee for?

A. I went to the fair.

Q. Where was Mrs. House when you left to go to the fair?

A. I left her at the house.

Q. Whose house?

A. My mother's.

Q. You left your wife there?

A. Yes, sir; she was there.

The COURT. Do you want to examine the witness, gentlemen?

Col. BARNES. I don't believe we do, your honor.

LENA LEWIS.

Col. CLAYTON. Your name is Lena Lewis?

A. Yes, sir.

Q. Are you George Lewis's wife?

A. Yes, sir.

225 Q. Do you know Mrs. House?

A. Yes, sir; I know her.

Q. When did you see her? Did you see her when she was running away from home?

A. Yes, sir.

Q. Where did you see her?

A. At my house.

Q. When?

A. On Monday night.

Q. How long did she stay there?

A. All night and all day Tuesday, and Tuesday evening we started down to Mr. Lewis's mother's. He was going to the fair, and I was too, and she was going down there, and we taken her to his mother's, and she wants to go to town and I carried her.

Q. Where did you take her to?

A. To Gibson Station.

Q. What place is that?

A. Gibson Station.

Q. How far from where you lived?

A. I don't know; it is a good ways.

Q. What time did you take her there; do you remember?

A. Wednesday.

Q. Did you get a dress from her?

A. Yes, sir.
Q. What did you pay for it?
A. Four dollars.
Q. Did you see anything of Steadman?
A. No, sir; I don't know nothin' about Steadman.
The COURT. Did any man go with you?
A. Yes, sir.
Col. CLAYTON. Who was it?
A. Mr. Lewis; when we got to his mother's we staid all night and I got his brother to drive the wagon, and he come on down home.
Q. He was a colored man?
A. Yes, sir; I got him to drive the wagon for us.

226 Q. About what time on Monday evening did she come to your house?

A. It was Monday.
Q. What time in the night?
A. I couldn't tell exactly, but I think my clock was right, and it was eight o'clock by my clock; but whether my clock was right or not, I can't say.

Cross-examination:

Col. CRAVENS. Did you know she was coming there?
A. No, sir.
Q. Who came with her?
A. Calvin Powell.
Q. Where did she say she was going?
A. To Little Rock.
Q. How did she get on at Gibson Station?
A. I can't tell you.
Q. You left her at Gibson Station?
A. Yes, sir.
Q. That is a regular stopping place; there is a station there, a depot?
A. Yes, sir; that is what I told you; it is Gibson Station.
Col. CLAYTON. We will rest the case, your honor.
The COURT. Call your first witness, gentlemen.
Thereupon the Government closed its case in chief.

227 The defendant, to maintain the issue upon his part, produced the following witnesses, to wit:

James L. Johnson, Caroline Bruner, Charles Gladwell, John C. West (recalled), Jeff Marshal, J. R. Terry, Harve Garrison, Col. William M. Cravens, Joseph Crow, Susan Hope, William Turner, William Turner (recalled), John B. Floyd, Charles J. Phenis, Gus Orcutt (recalled), James L. Johnson (recalled), and William H. Alexander (defendant), who testified respectively as follows:

228 *Testimony for defense.*

JAMES L. JOHNSON.

Col. CRAVENS. Where do you live?
A. In the Creek Nation.
Q. Were you at the place where the body of Steadman is said to have been found—the remains of a man?

A. Yes, sir.
Q. Near Meagher's farm?
A. Yes, sir.
Q. How far from Meagher's farm?
A. It was between 40 and 45 steps.
Q. When were you there?
A. The day he was buried.
Q. I will ask you if you found any money?
A. Yes, sir; found pieces of money.
Q. What kind of money?
A. It was pieces of a 20-dollar bill.
Q. Greenback?
A. Yes, sir.
Q. You were able to identify it *is* a 20-dollar bill; do you know whether anybody else found a piece?
A. I heard Alexander found a piece, and Charley Steward got a piece.
Q. You heard Alexander did?
A. Yes, sir.
Q. You didn't see it?
A. No, sir.
Q. I will ask you if you found any other money?
A. Yes, sir; I found something that looked like money that was chawed up in a wad; a piece as large as the end of my thumb.
Q. Looked like greenback?
A. Yes, sir.
Q. Was all chewed up?
A. Yes, sir.
Q. Where did you pick it up, this 20-dollar piece?
A. It was lying a little out west of where the body lay; just a little ways in a path, nearest to where the body lay.
Q. Where was this Stewar' piece picked up?
A. Right in the same place.
Q. Where was this other piece picked up?
A. About the same place.
229 Q. There was a piece all chewed up that looked like a wad, as big as the end of your thumb?
A. Yes, sir; it was laying beyond the hole, and it looked like it had been rooted out by the hogs.
Q. You couldn't tell anything about what it was?
A. No, sir; I tried to take it apart, but as fast as I would take it apart it would fall to pieces.
Q. You are subpœnaed as a witness for the Government?
A. I think so; yes, sir.

Cross-examination:

Col. CLAYTON. How do you know that was money?
A. All I know was by the color, and what was chawed up.
Q. What color was it?
A. It was green.
Q. How far was this from where Stella James lived?
A. I suppose about 300 yards.

Q. When you got there you found the remains of a man; what did you do with it?

A. Hung it up on a pole in a tree.

Q. How much of the body was there?

A. The arm bones, from the shoulders down, and the thigh bones down to the feet.

Q. Found a gun there?

A. I didn't see any gun.

Q. That had been taken away when you got there?

A. Yes, sir.

Q. Hat there?

A. Yes, sir; there was a hat there.

Q. Part of a hat?

A. Yes, sir; crown was torn out of it.

Q. Pieces were lost?

A. Yes, sir.

Q. Was it bushy there?

A. Yes, sir.

Q. Did you see a piece of his skull with a bullet hole in it?

A. I didn't see any in his clothing.

230 Q. Skull—a piece of his skull?

A. Yes, sir; I misunderstood you; I thought you said a piece of his clothing.

Q. Did you see a tax receipt there?

A. Yes, sir.

Q. (Handing witness tax receipt.) Look at that and see if that is it?

A. It looks like it; I think it is it. I wouldn't want to say for certain, but if it ain't it, it looks like it; I don't say it is it.

Q. I will read this to the jury?

Col. CRAVENS. Where did you find that, Mr. Johnson?

A. Laying right close to where the remains was; right close to where the money was.

Col. CLAYTON (reading). "Number 388." (Upper left-hand corner.) "$2.50." (Upper right-hand corner.) "Poll-tax receipt." Dated some place in Arizona, "May 7, 1889."

"This certified that D. C. Steadman has this day paid $2.50 poll tax for the year 1889." (Signed.) D. C. Whitley, county treasurer. E. J. T. Warren, clerk board of supervisors. S. N. Towner, deputy. W. O. O'Neal, assessor.

Col. CLAYTON. I will introduce that in evidence.

The COURT. Did the witness say he found the tax receipt there?

A. Right around where the corpse was found; there was a pole pretty close to where the corpse fell, and this was laying between it and the pole.

Q. How high was it?

A. Four or five inches.

Q. A small pole, lying on the ground?

A. Yes, sir.

231 Col. CRAVENS. The hogs had rooted it up there?

A. Yes, sir.

Col. CLAYTON. Did you not find a pocket-book with David C. Steadman's name on it?

A. Yes, sir.
Q. What became of it?
A. I gave it here to the commissioner.
Q. I don't find it among the papers; you gave it to Mr. Brizzolara?
A. I don't know; Mr. Brizzolara or Mr. Wheeler. His office was in the jail.
Q. Did you examine for tracks?
A. Yes, sir; but we found none.
Q. A good many hog tracks?
A. Yes, sir; hog tracks and trails going in every direction.
Q. How did you know that Steadman was missing?
A. I don't know, hardly; I knowed he was.
Q. You found some cartridges there.
A. Yes, sir; some empty and some loaded.
Q. Ten or fifteen?
A. Must have been that many.
Q. Paper hulls?
A. Yes, sir.
Q. And of them loaded with buckshot?
A. One of them was loaded and branded "B;" couldn't tell whether it was buck or bird.
Q. Could you tell anything about the color of the clothing?
A. Couldn't tell much about it.
Q. You buried everything—skull, bones, and all?
A. Yes, sir.
Q. Do you know who took the bones up.
A. No, sir; I don't know.
Q. What sized cartridges were these?
A. Number ten, the one I got, and all the hulls were number 10.
Q. Any of them look like squirrel shot?
232 A. One of them laying on the ground, where the hogs had tromped it.
Q. Some of them had been discharged?
A. I didn't notice.
Q. You said before the commissioner that some of them had been discharged. (Reading.) "I don't know whether they fit his gun; they were number ten cartridges; I couldn't tell what they had been loaded with; some of them had been loaded with squirrel shot, because I saw them lying on the ground; some of them had been discharged from the gun. I don't think there was as many of them as 20 that had been discharged—maybe 12 or 15 of them; there was about 20 in all——."
A. I don't know; there was some of them that had been discharged.
Q. "I picked up four loaded ones. All of them that was empty had not been discharged, because on some of them the caps were good. They had been tromped around and unloaded that way." On part of them the caps were gone?
A. Yes, sir.
Q. Timber land around there?
A. Yes, sir.
Q. What sort of place was it where you found the body?
A. It was right smart thickety between that and the road.

Q. Pretty "thickety" place?

A. Yes, sir.

Q. Brush had been tramped down by the hogs near the body.

A. Yes, sir; it was all tromped down.

Q. What kind of looking stuff was that you said was a wad of money as big as your thumb?

A. It was green looking; all there was to it you could see something that looked like letters on it.

Q. Did it look like the cud that a horse had been chewing or a cow?

A. No, sir.

Q. You saw no letters on it?

233 A. I did some; couldn't tell what they was.

Q. What letters did you see?

A. I didn't pay much attention to *it*.

Q. Anybody else see it?

A. Charles Gladwell, and Charles Gladwell's uncle.

Q. What is his name?

A. I don't know.

Q. Any silver money, or gold found there—any at all?

A. No, sir.

Q. Did the defendant tell you where he had left the deceased?

A. Yes, sir.

Q. Where did he tell you he had left him?

A. Yes, sir.

Q. Where did he tell you?

A. On the road, between the prairie and the bottom, there; he said he stopped to pick up some hickory nuts, and he overtook him at the corner of Meagher's farm.

Q. He left him to stop and pick up hickory nuts, and then he overtook him at the corner of Meagher's farm. Then what?

A. He said that was the last he saw of him; he said he was in the road looking up a tree at a squirrel.

Col. CRAVENS. At the corner of Meagher's farm?

A. Near the corner.

Q. Of Meagher's farm?

A. Yes, sir.

Col. CLAYTON. And then what?

A. He says to him, "Alexander, my horse is loose, and you catch him and take him on home to the camp and I will go through and see if I can kill a deer."

Q. Go through where?

A. He didn't say; he didn't tell where.

Q. What did he say about the last he ever saw of him?

A. He said he was looking up a tree, as if he was looking at a squirrel.

234 Q. Did he say where that was?

A. Something near the corner of Meagher's field.

Q. Something near where he was killed?

Col. CRAVENS. He didn't say so.

Col. CLAYTON. I asked him if he was there.

Col. CRAVENS. He is your witness, and we have the right to cross-examine him.

Col. CLAYTON. No you don't; you called him.

Col. CRAVENS. You have no right to lead him.

Col. CLAYTON. There is a road *the* comes in below where he was killed; did he claim it was on that road?

A. There was another road.

Q. He was on the road that leads along the north side of that field?

A. The body was found before you come into the road; a little below.

Q. What do you call below?

A. East of it.

Q. Coming in from where?

A. From the prairie.

Q. He would have to go along that fence.

A. After he got in to the fence he would.

Q. When he come to the corner of the field?

A. Near the corner of the field.

Q. Mr. Johnson, you say the body was between the corner of the field and where this road comes in there to the fence?

A. Yes, sir.

Q. You saw this map?

A. Yes sir.

235 Q. And you never told me before about this trail. [Showing map.] Here is the road that runs along Meagher's farm?

A. Yes, sir.

Q. And here is the road that runs into the corner of Meagher's farm; here is the north line of Meagher's farm, and here is the corner of Lipscomb's farm, and you say this trail runs out here from this point (west of body) to the prairie. How far to the left (west) of the house?

A. I couldn't hardly tell you the distance.

Q. Here is the house right here, and over here is the Cochran house. You say this road starts out here [indicating]?

A. It starts out from the Meagher's farm somewhere near the gate; there is a gate right here at the house—Rabbit house.

Q. Do you know where the Rabbit house is?

A. Yes, sir.

Q. There is a gate there?

A. You have got the house closer to the corner than it ought to be.

Q. You were there when I made it; nobody else says so. How close is the house to the corner; is it 300 yards; is it more than that?

A. Yes, sir; four or five hundred yards.

Q. How far from here to the road?

A. I couldn't tell you how far it is.

Q. I want you to tell; you have got to tell.

Col. CRAVENS. From where?

Col. CLAYTON. From the body, where this road leads off to the left. (To witness.) You tell me where that road leaves, sir.

A. I don't think it is more than 100 yards to where the road takes off.

236 Q. The road takes off between the Rabbit House and the place of the killing?

A. Yes, sir.
Q. Where did he say he overtook him?
A. Near the corner of Meagher's farm.
Q. That is where one road runs into the other?
A. I suppose so.
Q. It is about 100 yards. The house is about 300 yards from the place of the killing, and the road runs off about half way between the house and the place where the body was found?
A. Yes, sir.
Q. He told you that they stopped as they came in to gather hickory nuts?
A. Yes, sir.
Q. And that after that he rode on?
A. Yes, sir.
Q. And then he overtook the deceased there near the corner of Meagher's field?
A. Yes, sir.
Q. And after he overtook him there deceased said to him that he would go through the field, and told Alexander to catch his horse and take him to the camp, and he would go through and see if he could kill a deer; and then, he said, he went on, and that was the last he saw of him, and that he was looking up a tree for squirrel?
A. Yes, sir.
Q. When did he tell you that?
A. He told me that the day the body was buried.
Q. Did you ask him anything about the horse that Steadman was riding?
A. Yes, sir.
Q. What did he say about it?
A. He said he was riding it.
Q. Did he tell you he supposed Steadman had gone off with this woman?
A. Yes, sir.
Q. When did he tell you that?
A. It was the day we were burying the remains of Steadman.
237 Q. After you found the remains of Steadman, did he still suppose he had gone off with her?
A. I reckon not.
Q. Did he know Steadman's remains.
A. He claimed he knowed his boots and spurs.
Q. Did you see the gun?
A. Yes, sir; I saw it at the store.
Q. How was it?
A. Considerably weather beaten and rusty.
Q. How many loads in it?
A. The left barrel was loaded and the right one empty.
Q. That is the gun that belonged to the deceased?
A. It was supposed so.
Q. No hull in the barrel that was empty?
A. No, sir; none at all.
Q. Double barreled gun; that is the gun; look at that gun and see if that is it.
A. [Taking gun.] It looks like it, but it has been rubbed up some.

Q. Rust has been rubbed off of it?

A. Yes, sir.

Col. CRAVENS. He said that he stepped back on the road some where to pick up hickory nuts.

A. Yes, sir.

Q. And he overtook Steadman near the corner of Meagher's farm, and where he overtook him he was off his horse, and his horse was loose, and he told him to catch the horse, and he would go through the field and see if he could kill a deer?

A. Yes, sir.

Q. He says: "Alexander, you catch my horse, and take it on to the camp and I will go through and see if I can kill a deer." That was near the corner of Meagher's farm?

A. Yes, sir.

238 Q. Now, Johnson, this road that you speak of there is the only one that comes down from the east to the farm?

A. The only one I know of; I never was at the corner of the farm where that road turns off since we all was there.

Q. You know where the Rabbit House is?

A. Yes, sir.

Q. Do you know where a little house is off beyond that, a litt*litt*le east of it?

A. I know that.

Q. Northeast of it?

A. Yes, sir.

Q. On the same road?

A. Yes, sir; I know there is a little house in there to the right of the road, between the road and the farm.

Q. That is where Charley Cochran lives?

A. The road goes to the left of Cochran's.

Q. How far does that house stand from the corner of the field—the Rabbit House?

I don't think it is more than three or four hundred yards.

Q. It is not that far.

A. I never was there in my life; all I judge is from the road.

Q. Don't you know that the road comes in to the Me'gher's farm east of the Rabbit house, that it strikes the fence east of the Rabbit house?

A. The one that I am speaking of don't.

Q. The one that runs out by the Cochran house. Suppose you were going east on the north side of Meagher's farm, and were you going to Cochran's would't you have to pass the Rabbit House; wouldn't you have to pass right by the Rabbit House?

A. No, sir.

Q. How near to the Rabbit House?

239 A. I would suppose may be 150, may be not so far.

Q. Why, great guns, I am talking about a point opposite the house; I know the house stands in a field, but there is a road, or do you know whether there is a road that runs along in front of the house, off east?

A. I never saw it.

Q. Dosen't that road run off east of the Rabbit House?

A. No; west of the Rabbit House.

Q. I don't doubt you think so, but you are mistaken.

Col. CLAYTON. Yes, that is a mistake; we will let it go at that.

Col. CRAEV'NS. Now, I believe you say you don't know how far it is from opposite the northeast corner of Meagher's field; that would be the northeast corner, east of the house?

A Yes, sir.

Q. Now, do you know how far it is from the northeast corner right up near it to the road that runs off to the left?

A. No, sir; I have no idea; I never was there only a time or two, going to the prairie.

Q. You think it is four or five hundred yards from the corner of the field to where the body was found?

A. I would think so.

CAROLINE BRUNER.

Col. CRAVENS. Your name is Caroline Bruner?

A. Yes, sir.

Q. You were sworn the other day?

A. Yes, sir.

Q. Where do you live?

A. I live in the Creek Nation.

Q. Do you know where Choska Store is—Lipscomb's store?

A. Yes, sir.

240 Q. What farm do you live on?

A. I live up on Gentry's farm.

Q. You live at the same place Jim Bruner lives?

A. Yes, sir.

Q. Do you know Alexander, here?

A. Yes, sir.

Q. And Steadman?

A. Yes, sir.

Q. Do you know when they came there?

A. Yes, sir.

Q. What day?

A. They came there on Thursday evening.

Q. How long did they stay there, Caroline?

A. They staid there Friday and Saturday and Sunday.

Q. The first you know that they were there where did they sleep?

A. When they first come they slept out to their camp.

Q. Where was their camp?

A. At the side of the road.

Q. Outside of the yard?

A. Yes, sir.

Q. What time did they get there?

A. About sunset.

Q. And they slept that night out there?

A. Yes, sir; both slept out there by the wagon.

Q. The first night they slept out at their camp?

A. Yes, sir.

Q. Where did they sleep the next night?

A. At the same place.
Q. Did they sleep in your crib any nights?
A. They slept out in the corn crib the last night before he was missing.
Q. Do you know how many Sundays they were there?
A. They wasn't there but one Sunday.
Q. Do you know the day that Steadman went off and didn't come back?
A. Yes, sir.
Q. What time was that?
A. Went off Monday, after breakfast.
Q. Who went with him, Caroline?
A. Alexander; just them two.
Q. Did you see Alexander load his gun before he went off that morning?
241 A. I seen them load the gun, but then I didn't pay much attention to it; I was walking across the floor and they were settin' down at the door in the house.
Q. Where did they load it?
A. In the house.
Q. In your house?
A. Yes, sir.
Q. You didn't notice how he loaded it?
A. No, sir, I didn't look to see; but then they was setting down in the house by the door.
Q. It was a gun—one of these guns that loads at the muzzle; it was a double barreled shotgun; he had borrowed it from Jim?
A. Yes, sir.
Col. CLAYTON. Jim Bruner?
A. Yes, sir.
Col. CRAVENS. Now, did you see him load any pistol there that morning?
A. No, sir.
Q. You didn't see him have any pistol there that morning?
A. No, sir.
Q. You was there when he loaded the gun?
A. Yes, sir.
Q. But you never saw any pistol in there? You would have seen the pistol if he had had one?
A. Yes, sir. I was passing along through the house.
Q. You didn't see it?
A. No. sir.
Q. After he got the gun loaded—that is, Jim's gun—they went off?
A. Yes, sir.
Q. Then both of them had guns?
A. Yes, sir.
Q. Alexander had one, and Steadman had his own. They went between Lipscomb's store and Gentry's field, going on towards Choska. Did you ever see Steadman any more after that?
242 A. I never did see him any more.
Q. Did you see Alexander; when did you next see him?
A. I seen him; he come back that evening.
Q. About what time?

A. About dark when he come in the house.

Q. Where was Jim then?

A. I don't know.

Q. While they were there, Caroline, did they generally stay about their camp?

A. They would stay there until they got their horses fed and got their breakfast, and they would both go off hunting, and they would both come back together until that evening.

Q. When they would get back, what would they do?

A. They would go out to the camp, and get down, and he would come in the yard.

Q. Would they eat supper out there at the camp?

A. Yes, sir. After they got through their supper they would come in the room where we was, and set down and talk until bed time, and then they would get up and go out to bed under the wagon.

Q. Do you know how many nights they slept in Gentry's crib?

A. Never slept in there but one night.

Q. That was Sunday night?

A. Yes, sir.

Q. Now, this Monday night, when Alexander came back, where did he sleep that night?

A. Monday night?

Q. Yes, the night he came back without Steadman.

A. He slept in the wagon.

Q. Slept out there, did he?

A. Yes, sir.

Q. When he came back that night, what did he do?

A. He came in there where I was.

243 Q. Did he go out to the camp and feed and water the horses?

A. Yes, sir.

Q. And then he came to the house where you were?

A. Yes, sir; and then came in the house and set in the corner.

Q. About dark?

A. Yes, sir. They had been eating with us, both of them, and when he come in he set down in the corner.

Q. Did he say anything to you about his partner, and, if so, what did he say?

A. Well, when he come in and set down by the corner I missed Dave, and I turned around and asked him where was Dave, and he told me, that Dave went out by the corner of Meagher's field, to go through to hunt a deer, and he would be on after awhile.

Q. Was Jim there when you asked him that, and when Alexander came to your house and sat down, and you had this talk?

A. Jim wasn't there, as I recollect of.

Q. Did Jim come after while?

A. Yes, sir. He asked him, himself, where Dave was, and he told him Dave went up around the wire fence, through to get to kill a deer, and he would be home after while.

Q. Just like he told you?

A. Yes, sir.

Q. When Jim came he asked him where was Dave, and he told him just as you have said, that he went through Meagher's field, or Meagher's wire fence, to see if he could see a deer. That is what he told you?

A. Yes, sir.

Q. And that is what he told Jim when he came?

A. Yes, sir.

Q. And that night, after staying there awhile, he went out and slept at his camp, did he?

A. Yes, sir.

244 Q. Where did he sleep the next night?

A. The next night there was a crowd of men out hunting for House's wife, and he said he was a little scared to sleep in the crib by himself, and asked Jim if he could sleep in the back room, and Jim told him all right, and he slept in the back room.

Q. That was Tuesday night?

A. Yes, sir.

Q. And that was because some men were hunting for Mrs. House?

A. Yes, sir.

Q. And he accused Dave of running off with her?

A. Yes, sir.

Q. And he brought his bed clothes in there and slept in there?

A. Yes, sir.

Q. Did he continue to sleep in there from that time, as long as he stayed there?

A. Yes, sir He slept in there all along; he had been having the chills and fever, and he moved in the room where we had a fire the last night he was there.

Q. He did, until he slept by your fire?

A. Yes, sir.

Q. Now, what time on Tuesday, Caroline—what did he do on Tuesday?

A. Well, as well as I could recollect, he wanted to go and hunt his partner, and he said he had in his coming around, he had met a man going in the direction he come from, and told the man if he seen his partner to tell him to come on, and he said he had met him.

Q. What was he going to do the next day?

A. Went back and asked that man did he see his partner, and he said he must go on.

Q. What did he say the man said, Caroline?

A. He said the man told him he saw his partner.

Q. Now, that was Tuesday?

A. Yes, sir.

245 Q. What time did he get back Tuesday evening?

A. I don't recollect what time he got back.

Q. What did he do every day; did he go out and hunt him every day, or what did he do?

A. No, sir; he didn't go out every day. He was tendin' to his horses.

Q. He expected him back?

A. He was always looking for him to come back, and always looked, and he never did come back there, and finally a letter came there that they had found his partner.

Q. Who brought that letter?

A. Jim Samuel's stepson, William Perryman, sent the note up by him.

Q. What was his name? It was a boy?

A. Yes, sir; I just forget his name—I don't remember his name—I don't remember so well.

Q. Were you there when he brought the letter?

A. I was there in the house; and then Alexander he come dow' and says there is a letter here, and that his partner was found, and he didn't stay long, and he went and followed the little boy down the road.

Q. The little boy was there waiting for him?

A. Yes, sir; he waited for him.

Q. Did the little boy tell anything about the body being found? What did the little boy say up there?

A. I don't know what he said.

Q. Did the little boy talk to you?

A. No, sir; I was in the corn patch and seen him come around the fence, and he told me when I got to the house. He said a letter had come from his partner was found, and then he right away got on his horse, and went off with the boy, and went on down the road.

246 Q. Which way did they go?

A. Alexander and the boy?

Q. Did he go with the boy?

A. Yes, sir.

Q. Now, then, he come on down east; that is, down towards Perryman's?

A. Yes, sir.

Q. You didn't talk any with him?

A. No, sir; not with the boy.

Q. You were out in the field?

A. Yes, sir.

Q. And after you got to the house Alexander got his horse and got on it, and, I believe, you say he said his partner was found, and he got on his horse and started down the road; and then he came back there in the night, the same night, and he staid there that night?

A. Yes, sir.

Q. What did he do the next morning?

A. The next morning he got up some men and went to go to see about him?

Q. When did you see Alexander next after that?

A. Well, I seen him that day.

Q. What was he doing?

A. He come back to the house and I was turned around the fireplace there cookin', and he stepped in with a gun and he said: "Caroline, here is poor Dave's gun," and I turned around and says: "Well, sir, ain't it?"

Q. Did he stay there or go on to Muskogee that evening?

A. No, sir; he didn't went that evening. He carried the gun in there and cleaned it up and leant it up in the room where he was sleepin'.

Q. W'at did he do the next day? Did he go towards Muskogee the next day, or try to?

A. I don't know what day he went to Muskogee. Jim told him he had better go to Muskogee.

Q. That was after the man was found?

A. Yes, sir.

247 Q. Did he go to Muskogee the next day?

A. No, sir; he started there, and he got to the ferry, and he couldn't get across, and before he could make it to Muskogee the marshals overtook him and brung him home, back to Lipscomb's store.

Q. Now, Caroline, they were there sometime. Did you ever hear Steadman say how they owned the horses, or whose horses they were, whether they were partners?

A. Well, I heard them say once that they was partners in the horses.

Q. Heard Steadman say so?

A. Yes, sir.

Q. Did you hear what Alexander said about it?

A. He said they wa' partners in the horses, and partners in the gun.

Q. They both said so?

A. Yes, sir.

Q. Alexander and Steadman?

A. Yes, sir

Q. Did they get corn from your place?

A. Yes, sir.

Q. Well, whom got the corn, Caroline?

A. Well, Dave would pay for the corn, as far as I seen; I don't know; maybe both of them was to pay for it; I couldn't tell; Alexander would come in and get corn out of the barrel every morning and evening, and feed the horses.

Q. Do you know who paid for the corn?

A. I don't know for certain if he was to pay for it or him.

Q. You don't know which one was to pay for the corn?

A. No, sir.

Q. But you know they both got corn?

A. Yes, sir.

Q. They both claimed that they were partners in the horses and in the gun?

A. Yes, sir.

Q. Do you know anything about a satchel being taken out of

248 the wagon, Caroline?

A. He come there once, and searched around the wagen, and asked me did I see any fellows in the wagon.

Q. That was Alexander?

A. Yes, sir.

Q. That was after they had searched the wagon?

A. Yes, sir; and I made answer to him: "No, sir; none of us never seen it, because you didn't leave me to mind your wagon." I know Jim told me there was two men walked up there and went towards the river with it.

Q. You told him that?

A. Yes, sir.

Q. You told Alexande' that Jim had told you about it?

A. Yes, sir.

Q. And that happened while Alexander was gone to Muskogee?

A. Yes, sir; I told him I didn't know anything about the valise; that I never seen it.

Q. All you knew about it was what Jim told you?

A. Yes, sir

Q. Jim said two men had carried it off towards the river?

A. Yes, sir.

Q. You hadn't seen anybody take it, yourself?

A. No, sir.

Q. You said, Caroline, that you saw Alexander loading his gun Monday morning, before he went off, in your house?

A. Yes, sir.

Q. Did you notice what kind of shot he loaded it with?

A. Well, I don't know exactly, but it was small shot.

Q. It was squirrel shot; it wasn't big buck shot?

A. Not as I know; I was passin' backwards and forwards through the house, and they was settin' by the door loading the gun.

Q. Who was?

A. Alexander and Dave.

Q. Was Jim there; do you know who was there—it was
249 Alexander and Dave working with the gun?

A. Yes, sir.

Q. That was Jim's gun?

A. Yes, sir.

Q. Were they loading it with Jim's shot?

A. I don't know whose shot; I didn't notice that.

Q. Well, did you see the shot that they put in the gun?

A. I seen them have the shots in their hands.

Q. What kind of shot were they?

A. They was—looked like small shots.

Q. Do you know what buskshot is—large-sized shot?

A. Yes, sir.

Q. Were they large-sized shot?

A. I didn't examine them very close; I was busy passing along there, and I seen them there loading the gun.

Q. If you notice no, I want to find out whether you saw any of this large sized shot?

A. No, sir; not as I saw; I never noticed, but I know they was loading it with shots.

Q. You didn't notice the shot particularly?

A. I just noticed a glimpse of the shot in their hands as I would pass backwards and forwards across the house.

Q. You came down here with Jim, didn't you?

A. Yes, sir.

Cross-examination:

Col. CLAYTON. Caroline, I believe, is your name?

A. Yes, sir.

Q. This pistol you speak of, what kind of a pistol did they have?

A. Well, I couldn't tell you what kind they had.

Q. Alexander had a pistol?

A. Yes, sir; Alexander had a pistol.

Q. It was a cap and ball?
A. Yes, sir.
Q. It wasn't one of these kinds you shoot a shell in?
A. No, sir.
250 Q. Did Steadman have a pistol?
A. No, sir; he had a gun.
Q. He had a gun and Mr. Alexander had a pistol?
A. Yes, sir; as far as I seen.
Q. Did Mr. Steadman load his gun, too, sometimes?
A. Yes, sir.
Q. He would load his gun when they went out hunting. He would load his gun and Alexander would load his pistol. Did they load the pistol in the house?
A. No, sir; out to the camp.
Q. He would load his pistol there sometimes?
A. Yes, sir.
Q. Sometimes got ammunition from your husband?
A. Never noticed that.
Q. I suppose he had a good many things?
A. No, sir; nothing but a gun.
Q. You say you were busy about the kitchen; you were cooking for Jim?
A. Yes, sir; and looking after things around the house.
Q. You wouldn't pay much attention to those things; ladies in your country don't pay attention to such things?
A. No, sir.
Q. Now, Caroline, you say that these two men slept in the wagon the first night they were there?
A. Yes, sir.
Q. And Sunday night they slept in the crib; there came up a storm in the night?
A. Yes, sir.
Q. And they moved into the crib?
A. Yes, sir.
Q. That was Sunday night?
A. Yes, sir.
Q. And on the next day, Monday, they loaded their guns in your house?
A. Yes, sir.
Q. Monday, af'er breakfast, they loaded Jim's gun?
A. Yes, sir.
Q. Did you hear Jim tell them that one barrel wasn't very good?
A. Yes, sir.
251 Q. You heard Jim tell them that?
A. Yes, sir.
Q. Tell Alexander that that morning?
A. Yes, sir.
Q. You didn't see the kind of shot they put in the gun?
A. No, sir.
Q. Or whether they put a different kind in one barrel?
A. No, sir.

Q. Jim was standing there helping them load?

A. Yes, sir.

Q. Then they left?

A. Yes, sir; after breakfast.

Q. When they left Steadman left first, didn't he?

A. Went ahead, Dave did, and Alexander galloped up and caught up with him.

Q. Alexander behind and Dave in front, and that is the last you ever saw of Dave?

A. Never saw him any more.

Q. Did you say Dave got corn of you?

A. Yes, sir.

Q. He had been getting corn ever since he first came there?

A. Yes, sir; he got some tomatoes from me.

Q. Did he buy them?

A. Yes, sir.

Q. Did he ever buy anything else from you?

A. No, sir; I asked him to ketch some catfish for me and he says, "You must give me a chicken," and I told him I would, and he said he would, and he caught four catfish for me and he traded them off, and the next week Alexander told me to kill the chicken and we would eat it.

Q. Steadman tended to feeding the horses?

A. Yes, sir.

Q. Steadman didn't do much work?

A. I couldn't tell what they was doing; he never fed the horses much like he [pointing to defendant] did.

Q. Now, this satchel taken out of the wagon; I will ask you
252 about that; did Alexander tell you what was in that satchel?

A. He didn't tell me; he said it had some papers in it; some papers in the satchel.

Q. Didn't he say there was some money in it?

A. Didn't tell me anything about any money, only some papers.

Q. Now, Caroline, I will ask you if the night that Alexander slept in your house—the first night he slept in your house—if he didn't go on a good deal that night and say, "Dave, Dave, are you coming?"

A. Yes, sir; he was asleep, and when I woke up he was talking in his sleep.

Q. He was calling Dave in his sleep?

A. Yes, sir; and Jim made answer to him, and said, "Dave is come," and I was laying there awake, and I says, "No, he is not come, because he has been going on that way all night."

Q. How long was he going on that way?

A. He hadn't went on so very long.

Q. He was talking out loud?

A. Yes, sir; so I could hear.

Q. You wakened up?

A. Yes, sir; I was awake; Jim spoke up and said he believed Dave is come; he heard him talking in his sleep callin' Dave, and I made answer to him, "No, he isn't come," and that was all I said, and the next morning, sure enough, Dave wasn't come.

Q. You wasn't lying about it, then; Alexander was just talking in his sleep?

(No answer.)

Q. What did he say? "Oh, Dave?"

A. Just called Dave's name in his sleep.

253 Q. What did he say: "Oh, Dave; Oh, Dave," in his sleep?

A. Yes, sir.

Q. What time in the night was that?

A. It was before day; we all had slept and woke up.

Q. Are you certain that he didn't sleep in your house the first night after Dave was missing; are you certain about that; are you not mistaken about that; didn't he come home the night Dave was missing, and didn't he sleep in your house that night; didn't he sleep in the crib the night before; didn't he sleep in the house that night that he came home without Dave; you said it wasn't until the second night?

A. Let's see; he slept in the crib before Dave was missing; they slept in the crib together.

Q. He didn't sleep in the crib any more after Dave was missing?

A. No; not as I recollect of.

Q. Didn't he sleep in the house the first night after Dave was missing? I want you to think about that; I want you to just tell the way you think was right.

A. He called my little boy out the last night he was missing and told him to go and get his bed clothes.

Q. Now, the night that Steadman was missing, didn't he go out and ask the little boy to go out and water the calf, and when your little boy was watering the calf didn't he bring in his bed clothes in the house, and that was the night Dave was missing?

A. Yes, sir; I just remember.

Q. That was Monday night?

A. Yes, sir; I guess it was Monday night.

254 Q. The night he was missing?

A. Yes, sir.

Q. And it was Monday night he sent the little boy to water the calf?

A. Yes, sir.

Q. And when the boy went out to water the calf, and he went out and brought in his bed clothes, and that is the night he came home without Dave?

A. Yes, sir.

Q. How long did he sleep in your house?

A. Slept in there all along until they took him prisoner.

Q. Did you ever hear him any other night talking in his sleep?

A. No, sir; only that first night.

Q. Now, you talked to Mr. Steadman here (deceased's brother) about that, didn't you?

A. Yes, sir; I talked with him a little.

Q. You told him about that just that way?

A. Yes, sir.

Col. CRAVENS. When did you talk to Mr. Steadman about this matter, since you came here?

A. Yes, sir; Jim showed him to me and said that was his brother.

Col. CLAYTON. Jim showed Mr. Steadman to you as his brother?

A. Yes, sir; I talked a little with him.

Q. Did he come to you and talk to you about it, or how?

A. Him and Jim was standing up and a talking and I stepped up there when he was standing by the door, down stairs, by the courthouse steps.

Q. And you told him the same thing that you have now told me?

A. Yes, sir.

Q. That it occurred that way; I don't suppose you thought there was any particular harm in talking to his brother?

A. No, sir.

255 Q. You were one of the last persons that ever saw his brother alive?

A. Yes, sir.

Q. And you knew a good deal about it?

A. Yes, sir.

Q. And you told him they were camped outside of your yard?

A. Yes, sir.

Redirect:

Col. CRAVENS: Now, Caroline, I will ask you if the dogs wern't barking around there that night?

A. Yes, sir.

Q. Wasn't that the night you heard Alexander call "Dave, oh *D* Dave," when you heard the dogs barking?

A. Yes, sir.

Q. Now, Caroline, don't you remember you told me awhile ago that after the men were around there hunting one night, and that you had heard about them hunting for Steadman and this woman, that Alexander asked permission of Jim to sleep in the house?

A. Yes, sir.

Q. He was afraid to sleep out there?

A. He never slept out there.

Q. Wasn't that after you heard the men were around hunting for Steadman and Mrs. House, and he said the men were hunting for Mrs. House, and if they found him he didn't know what they might do?

A. I don't know.

Q. They had accused Dave of going off with this woman, and were around hunting for them, and that was the reason he was afraid to sleep out there without Steadman, and that was the reason he asked Jim to let him sleep in the house?

A. Yes, sir.

256 Q. Now, you said awhile ago, and I want you to tell it just as it was; you said that on Monday night, when Alexander came back, that after staying in the house awhile he went out and went to bed just like he always did. Now, wasn't it Tuesday night that he asked your little boy to go out with him? Wasn't that the night that he was afraid to go out, and he asked your little boy to go with him, and that was Tuesday night?

A. I can't recollect so very good.

Q. It was after they had been hunting Mrs. House and Steadman, was it?

A. Yes, sir.

257 10.30 p. m.

CHARLES H. GLADWELL.

Col. CRAVENS. Where do you live?

A. In the Creek Nation, Choska bottom.

Q. Do you know where Jim Bruner lives?

A. Yes, sir; I live somewhere near one-half mile from him, about north.

Q. On what place?

A. The Scott Gentry place.

Q. Do you know where—Jim lived on the same ppace last fall?

A. Yes, sir.

Q. And you live at the same place?

A. Yes, sir.

Q. Do you know where the defendant, Alexander, and Mr. Steadman were camped down there with their horses?

A. About 50 yards from Bruner's house.

Q. Do you know when they came there?

A. Either Thursday or Friday, I think.

Q. How long were they there?

A. 10 or 12 days.

Q. What day did Steadman disappear?

A. On Monday week after they came there.

Q. They had been there over a week?

A. Yes, sir.

Q. Until Monday, the week following?

A. Yes, sir.

Q. That would be 11 days?

A. It was Monday he disappeared. I didn't see him, though as I started out I saw Alexander next morning when he had been out hunting with him.

Q. You understood they went out together?

A. Yes, sir.

Q. They had not come there the Thursday before that, but Thursday a week before that?

A. Thursday or Friday a week before that.

Q. While you were there, how often did you see them?

258 A. I can't tell exactly; I saw them nearly every day or two, sometimes I would see them as I went by in the morning, and sometimes I would see them as I came in in the evening, and sometimes I would go out one way and come in another.

Q. You had some conversation with them?

A. I didn't have any conversations with them until after Steadman was missing; I just met them, and spoke to them. I had a talk with Alexander, a time or two, when he first came in the first evening; he came up there and wanted to know where to get down the bank to water his horses, and I told him where to go—well, I just spoke to him a little; I never had a conversation until after Steadman was missing.

Q. But you saw them almost every day. Were they generally together when you saw them?

A. Sometime and sometimes one would strike out, and then the other would be a little behind him, and sometimes both along side by side. They generally come in in the evening together; in the morning, I suppose, one got ready a little first.

Q. Do you know Jim Bruner?

A. Yes, sir; I have been acquainted with him ever since a year ago last spring; along about the last of March, a year ago.

Q. I will ask you if you heard a conversation with Jim Bruner in Reed's office some time ago, since you have been here, a statement in reference to what he knew about this matter?

A. I heard him tell Mr. Reed what he knew about the case, or a part of what he knoew.

Q. Who was present?

A. Me and Jim Bruner, and Mr. Terry.

Q. What did he say about the corn?

A. He said they both bought corn; sometimes one would pay for it and sometimes the other; Alexander bought the first corn, then
259 Steadman came and bought corn; sometimes one bought corn and sometimes the other.

Q. But Alexander bought the first corn?

A. Yes, sir; and he said they generally paid for it when they got it; he said once Steadman didn't have the change when he got corn, and he got the money from Alexander to pay for it, because he didn't have the change.

Q. What did he tell him about their both having money?

A. I have heard him say they both seemed to have plenty of money; he said he didn't see the money, but saw the book in their pockets. He supposed they both had a preety good pile of money.

Q. Did he say who owned the horses?

A. He says they both owned them; they told him they were partners, that is, each owned half, except two horses; that Alexander owned one separate of his own, and Steadman owned one. That is what Bruner told me. We were talking after that man was missing; I talked to him half a dozen times about it.

Q. That is what he always told you about it?

A. Yes, sir. I have talked to Alexander after Steadman left, or was missing.

Q. I will ask you if Bruner said anything about hunting over the ground where the remains were found, before they were found, after Steadman was gone?

A. He said on Wednesday after the man was missing that he was out in there hunting, and passed over the ground right where the bones were found afterwards, and there was no man there then.

Q. Was he hunting there in the day time, or in the night?

A. In the day time; that is the statement he made in the office here.

Q. I will ask you if Bruner told you anything about what Mr. Steadman (brother of deceased) here had tried to get him to say?

260 A. He said this Steadman here tried to get him to say that Alexander hadn't bought any corn; that Steadman bought all the corn, and the horses all belonged to Steadman, and none didn't belong to Alexander. That is what him and Doc. Stephens were trying to get him to tell that way.

Q. Steadman here and Stephens were trying to get him to tell it that way?

A. Yes, sir.

Q. Tried to get him to make that in his statement?

A. Yes, sir.

Q. Were you at the place where the remains of this man were found?

A. Yes, sir; I was there the mo'rning they were found; I wasn't the first one there, though; some men was there before I was, and they went down and got a box to put the bones in; they came to the store, and I went back with them; the bones was hanging up on a pole in the forks of a bush, that is, the leg bones and some little pieces scattered around on the ground.

Q. Did you see any money picked up there?

A. No, sir; I seen some pieces of money.

Q. How many pieces?

A. I couldn't tell you how many; at least pretty near as big as that platform [pointing to platform on which 12 jurymen are sitting]; pieces of money scattered all over the ground, and hog tracks, rooted up, pieces of greenbacks.

Q. How many pieces did you see that indicated the size of the bills?

A. 2 or 3 pieces; there was one piece, a twenty-dollar bill, had the figures on; then there was a ten or two just the figures on it, and one had the number on; I belive it was a twenty-dollar bill had the number on.

Q. That is, had the figures on, indicating the size of the bill and the number of the bill?

261 A. Yes, sir; the other there was just figures, and the numbers was gone, all torn up; no figures; and some in the hog tracks, scattered all around, and some you could not tell what they were.

Q. What was done with the remains?

A. Put in a box and buried right there where they were found.

Q. What kind of a place was that out from the road to where the body lay?

A. It was some brush and some scattering trees.

Q. Was it very brushy or comparatively open; I don't mean north of the body, but from the road to the body?

A. Well, it was not so very brushy; kind of scattering brush; you could ride up there very handy.

Q. How long did you remain there?

A. Until the bones were buried; me and Mr. Johnson put the bones in the box; Jim Johnson, I believe his name is; we called him Long Haired Johnson.

Q. What else did you put in the box?

A. Some few little pieces of clothing; I believe a hat was put in.

Q. There was a hat there?

A. Yes, sir; the top was torn out of it.

Q. Did you see any papers scattered around there?

A. Yes, sir; and a tax receipt with Dave Steadman's name on. Some asked Alexander what his partner's name was, and he said it was Dave Steadman, and the same name was on that paper. The boots was still on his feet yet with the spurs, but the coat and overalls and everything was

tore up. A pocket knife was found, and a match box with the lid broke, and a little box of blue ointment there, found.

Q. Did you find any empty cartridge hulls there?

A. Yes, sir; several of them laying around there.

Q. Were they empty?

A. Some of them were empty; I don't know whether some of
262 them were loaded or not; I didn't notice them; they had been rained on, spoiled, anyhow.

Q. They were paper cartridges, were they?

A. Yes, sir.

Cross-examination:

Col. CLAYTON. Are you a white man or an Indian?

A. A white man; raised in a free country.

Q. Full blooded, are you?

A. I guess so.

Q. Johnson is a white man, is he?

A. I guess so; he passes for one.

Q. How long have you lived up there among the Creeks?

A. I come in there a year ago last March.

Q. Where did you go from?

A. Webber's Falls up there; three miles the other side of Webber's Falls; I went there from the Arbuckle Islands down in the Arkansas River, in this county.

Q. Were you raised there?

A. No, sir; I was born in Iowa, and I came to Kansas when I was 7 years old.

Q. When did you come to Arkansas?

A. Five years ago last fall.

Q. How long did you stay in Arkansas?

A. I didn't stay long.

Q. More than six weeks or two months; did it get too hot for you?

A. No, sir; it was in the fall of the year; then I went up here on Poteau and staid there a little over a year; about seven miles above here.

Q. You seem to have traveled around a good deal.

A. Yes, sir.

Q. Are you a married man?

A. Not now.

Q. You think, "Great God! there was as much as that whole platform of pieces of greenbacks?"

A. I said something near that space.

Q. I understood you to say "Great God."

A. I don't think I put that in; but then it was scattered around.
263 Q. I expect five or six inches deep?

A. No, sir.

Q. Tramped down in the mud so if they were all put together, they would be a foot deep with greenbacks?

A. No, sir; it wasn't a foot deep; all the tracks didn't go down a foot in the ground.

Q. How far do you think there hog tracks went down in the ground?

A. Some of them probably a couple of inches.

Q. Did you fell down to the bottom of the hog tracjs?

A. We took sticks and felt down; we were looking for money, but didn't find only pieces.

Q. How thick was it scattered?

A. Just scattered like them spots on the floor [pointing to design in carpet]; they were not piled up on one another; just scattered over the ground.

Q. The little spots or the big spots [pointing to carpet]?

A. Some places that thick, and some places scattered out.

Q. How big pieces of greenbacks were they?

A. From the size of your thumb nail, to that size.

Q. About an inch and a half square?

A. Yes, sir.

Q. There must have been two or three hundred the way you tell it?

A. I expect two or three.

Q. Did anybody else see them?

A. Yes, sir; Johnson saw them; I don't know how many pieces, but it looked like it might be that many. It was raining on us when we were there at the burying.

Q. From the size of your thumb to an inch and a half square?

A. But the largest pieces found were about that size [indicating].

Q. Two or three inches?

A. Yes, sir.

Q. That tax receipt was torn all to pieces, too?

A. No, sir.

Q. Why wasn't that torn up?

A. That was raked up from under a little chunk.

264 Q. Hogs like greenbacks better than tax receipts. Those were pretty sensible hogs in your country?

A. Kind of bad hogs about eating men up that way.

Q. Was there pieces of clothing lying around there?

A. Yes, sir; little pieces of a coat, and little pieces of overalls.

Q. You found a piece of a book, didn't you; the back of a book?

A. I believe there was some pieces of a memorandum book.

Q. Didn't you find the back of a book, with his name on it?

A. I don't recollect about the back of a book; it might be picked up before I got there.

Q. It is testified to here.

If that is the case, the probabilities are the book was torn to pieces.

Q. Wasn't that what you saw?

A. No, sir.

Q. Them greenbacks were green?

A. Yes, sir; and some little pieces you could tell it was money, and greenbacks is different paper from any paper book.

Q. And two or three thousand of them?

A. I don't know how many; quite a number of pieces; they were small, scattering.

Q. Didn't you find a good many pieces of gold coin?

A. No, sir; didn't find ary piece; that is what we were looking for, digging in the mud for; they told us there was a buckskin purse, with gold in it.

Q. Did you see the man's skull?

A. There was a hole in one piece, a bullet hole, or a buckshot hole.

Q. What kind of a buckshot would fit that?

A. A number one or two.

Q. Pretty good size?

A. Yes, sir.

Q. What size is a blue whistler?

A. Number one, is what some people call a blue whistler.

265 Q. You would take this hole to be made by a number one blue whistler?

A. Number one or two; I never examined the hole; I suppose by the looks of it, it was one or tother of them, the size of one or two buckshot. There was no skull; there was four or five or six little pieces.

Q. Was there any other bones crushed except the skull?

A. I don't think ary other bone; the ribs was all gone, and a piece of the back-bone right next the hips about that long (about nine inches); all the upper part was gone, and the flesh had all gone off the body; there was flesh on the hands and the skin of the arms was left and the bones held by the skin, but the ribs and breastbone, and everything of that kind was all gone, and all the head and face, except the jawbone.

Q. Was it tramped around much with hogs?

A. Yes, sir.

Q. It seemed like a great many hogs were there?

A. Yes, sir.

Q. I believe you said there was hog paths leading in every direction?

A. No, sir; I said there was hog tracks right around where the bones were found.

Q. Mashed up, muddy, and nasty?

A. Yes, sir; part of it right where we supposed the body had been laying, tramped all around there.

Q. 100 hogs, probably?

A. No, there wasn't 100 hogs there at any one time.

Q. Well, there was a big gang of them?

A. There was a good many tracks around there.

Q. Tramped all up?

A. Yes, sir.

Q. All the intestines were gone?

A. Yes, sir; and the flesh of the legs clear down to the boots, to where the boots covered them.

Q. How was that where they were covered?

266 A. I never looked into the boots.

Q. All the flesh was off the body?

A. Yes, sir.

Q. Don't you think you have kind of stretched that greenback business a little?

A. No, sir; not a bit; it was scattered over a considerable little patch of it around there.

Q. You say they had been there ten or twelve days?

A. Yes, sir.

Q. Were they at the same camp all the time?

A. Yes, sir.

Q. How far did you live from that place?

A. Something near half a mile.

Q. Were you down there a good deal?

A. No, sir; only passed the camp a few times.

Q. Then you don't know exactly where they were all the time?

A. I know where the camp was; I passed a few times, and I was at work in a field close to the house; we had some potatoes planted within 40 yards of Bruner's house; we were digging some of them, and we had some cotton to pick.

Q. You say that you were in Reed's office?

A. Yes, sir.

Q. After you told him what you knew, why did you not get up and go out?

A. We were all there in there together.

Q. Did you have a woman in there?

A. No, sir; me and Jim Bruner and Mr. Terry went in there together.

Q. You had hold of one of Bruner's arms, and Terry had hold of the other?

A. No, sir; he walked up there by himself; he was stout enough to get up there.

Q. And you heard this conversation in which he said Mr. Steadman here wanted him to swear these horses were all his brother's?

A. Yes, sir; I heard that conversation in the street; that wasn't in there.

Q. Anybody else present when he said that?

A. No, sir.

267 Q. Now, nobody heard it but you?

A. Nobody but me.

Q. You were getting out of the office when he told that. How come he to tell you that in the street?

A. Just got to talking about the case and about there going to be pretty hard swearing.

Q. Was that after you were in the office?

A. Yes, sir.

Q. So you got him by himself when he said that?

A. Him and me was in the street ourselves.

Q. Where was he when he spoke about the horses?

A. That was in the street at the same time?

Q. That wasn't said, then, in Reed's office?

A. No, sir.

Q. So, if Bruner swears that it is not true and you say it is, the jury will have to toss up about that?

A. Yes, sir.

Q. Well, it will fall heads up against you.

A. I ain't going to bet on that.

Q. There is another conversation that took place in Reed's office?

A. Yes, sir.

Q. In that conversation he said both of them claimed to be partners and to have equal shares in the horses?

A. Yes, sir; he told me that a half a dozen different times up there on the farm before we came down here.

Q. He told you that in Reed's office?
A. Yes, sir.
Q. Did he tell you in Reed's office he saw them load the gun together in the morning they went out?
A. No, sir.
Q. Do you think you can remember the whole of that conversation?
A. I might not recollect every word about it.
Q. Was he asked anything about what they were doing that morning?
A. No, sir; not what them men was doing that morning; the only thing he was asked about was the property. He was asked to state
268 what he knew about them men staying there, and all he knew about the case; that is what Mr. Reed asked him.
Q. Who asked him about the property?
A. Mr. Reed.
Q. Did you help Mr. Reed to make this map?
A. No, sir.
Q. Who was acting as the lawyer there—you, or Reed?
A. Reed.
Q. What was your function?
A. I was there to tell him what I knew about it; I didn't know there was to be any proving up to do about it.
Mr. BARNES. You were asked to tell all you knew about the case and Bruner?
A. Yes, sir; and Terry told all he knew.
Q. And you told all you knew?
A. Yes, sir; that was what we were in there for.
Col. CLAYTON. I will ask you if after Mr. Steadman was missing, you and the defendant were not together nearly every night?
A. No, sir.
Q. Consulting and talking about these matters?
A. No, sir.
Q. Did you see him any after that?
A. Yes, sir; nearly every day, after the next Saturday.
Q. Where?
A. Down there at Bruner's.
Q. Did you go down there?
A. Yes, sir.
Q. What interested you to go down there nearly every day after that?
A. There was a horse of Mr. Gentry's—a stallion—and he got me to feed and water the horses and I was there three times a day.
Q. Why could not the defendant feed and water the horse?
A. It was Gentry's horse; he got me to feed him; he came home from the fair with the rheumatism, and he got me to feed the horse.
Q. Did Alexander go down to your place a great deal?
A. He was there several times.
Q. How many times?
A. I don't know.
269 Q. You and he got very intimate after this man was missing?
A. We didn't get very intimate.
Q. He was at your place a great deal and you were at his place a great deal?

A. I was at Bruner's every day for a while.

Q. And he was down at your place a great deal?

A. A few times.

Q. What was the bond of sympathy between you?

A. No particular bonds at all.

Q. You were together a great deal. Now you turn up as a witness for him. I will ask you if the defendant didn't come to your house, and if he wouldn't let Bruner stay in the house while you and he would go out and talk until nearly 12 o'clock at night? Did that ever occur?

A. I don't think it did.

Q. And talk until nearly midnight?

A. He never staid until midnight; he was there several times talking with Mr. Gentry and me and the rest of the folks there, and Bruner came with him a time or two after night.

Mr. BARNES. You live up on the corner of that field, between Bruner and Choska?

A. Yes, sir. I didn't live in the corner; I lived at the corner, but it is on the outside; Scott Gentry lives west of my about 100 yards, in a new house.

Q. He is the man owns the big field?

A. Yes, sir.

Q. Then Bruner lives right there in sight of you?

A. He lives right south of me; it was in sight of me when the crops wasn't too high.

Q. Did the land you cultivate run right up?

A. It run up, I think, 100 yards to Bruner's house, and the potatoes run up to his house within 30 yards.

Q. These stables, were they not rather between where Bruner lived and where you were?

270 A. I passed the stables and watered the horse right inside the field at Bruner's.

Q. These were the only stables Gentry had where he could keep horses?

A. Yes, sir; at that time; he got me to take care of him for something like four or five weeks.

Q. You are a widower; who lives with you?

A. My mother and uncle.

Q. A couple of old people?

A. Yes, sir.

Col. CLAYTON. That is your mother here, ain't it?

A. Yes, sir.

Mr. BARNES. I will ask you if Bruner wasn't at that time exceedingly friendly to Alexander?

A. They appeared to be on very good terms as well as I know, and did clear on till the last few days here.

Q. Didn't he take Alexander's part in his general talk, in every way, claiming he was an innocent man; wasn't that the tone—the tenor—of his talk until the last few days?

Col. CLAYTON. I object to that.

The COURT. That is incompetent.

A. JUROR. Do you know how many horses these gentlemen had there?

A. I think they had 38 or 40; they were taken away from there and I heard they went to Turner's pasture, near Muskogee.

Mr. BARNES. You understand they are near Muskogee now?

A. I don't know.

Col. CLAYTON. This defendant took charge of them before he was arrested?

A. No, sir; the marshal took charge of them before he was arrested.

Q. No, sir; he took charge of them from the time the man left until the marshal took them off.

Mr. BARNES. He staid right there at the same place?

271 A. Yes, sir; until he went down to report; he said he was going to report at Muskogee; that was after we got the man buried, and the next I seen of him, he was back there.

Col. CLAYTON. Up to that time he had charge of the horses.

A. Yes, sir; all of them from the time Steadman was missing.

Mr. BARNES. And he never made a move to get away from there?

A. No, sir; not that I know of; he staid there until we buried the body, and he told me he was going to Muskogee to report his partner being killed, and said that he was going to write back to Arizona to Steadman's nephew, and send word back to California to his brother for him to come on and get his half of the horses; that half of the horses belonged to Steadman, and he was going to write, but I don't know whether he did or not. He went a trip to Muskogee; he said that was where he was going; but I don't know where he went or not.

(Adjourned till to-morrow at 8.30 a. m.)

272 JUNE 19, 1890.—8.45 a. m.

CHARLES H. GLADWELL—(Continued).

Col. CRAVENS. I neglected to ask you a question yesterday, and I want to ask you this morning. Did you inform Alexander, before Steadman was found—did you inform him that his partner and Mrs. House had been seen going towards Wagoner?

A. I told him Mr. House told me that a man had met him between there and Wagoner.

Q. Mr. House told you that a man had seen him where?

A. That he had seen his wife and Steadman right close to Wagoner.

Q. And you told that to Alexander?

A. Yes, sir.

Q. You gave him that information?

A. Yes, sir.

Recross-examination.

Col. CLAYTON. When did you tell him that?

A. That was a week after this man left.

Q. Did he say it was his partner?

A. I was at the store, and I saw Mr. House, and he asked me——

Q. Never mind what he asked you; you told this man that House had told you that?

A. Yes, sir.

Q. And it was about a week after the killing; what day was it?

A. I don't recollect what day; I don't know whether it was a week after the killing.

Q. I wish you would stick to something.

A. About a week after the man disappeared.

Q. Of course he wasn't killed at that time; I don't think he has ever been killed; it was after his disappearance?

A. Yes, sir.

273 Q. About a week?

A. Something near a week.

Q. Was it Sunday?

A. No, sir; it was one of the week days.

Q. Where were you when he told you this?

A. Right close to Lipscomb's store.

Q. Day or night when you told Alexander?

A. Right close to Bruner's.

Q. Day or night?

A. About one o'clock.

Q. Anybody present?

A. Not right there.

Q. I believe you are the man that saw about a three-acre patch covered with greenbacks?

A. No, no.

Q. Not quite three acres?

A. No, sir.

JOHN C. WEST.—Recalled for defense.

Col. CRAVENS. You stated yesterday, when you were examined, that you, with Heck Thomas, arrested defendant. At the time you arrested him, did he have a pistol?

A. Yes, sir.

Q. The pistol was taken from him; what kind of a pistol was it?

A. One of these army sized pistols, Colt's.

Q. What number?

A. I suppose about a .44.

Q. Old-fashioned army pistol?

A. Yes, sir.

Q. Cap and ball?

A. Yes, sir.

Q. And a .44?

A. Yes, sir.

Q. You handled pistols during the war, and have handled them ever since?

A. I handled pistols a good deal the time of the war.

Q. You know what kind of a pistol it was?

A. Yes, sir.

Q. And it was an army, sized .44, Colt's pistol?

A. Yes, sir.

274 Q. Cap and ball?

A. Yes, sir.

Cross-examination:

Col. CLAYTON. Where is the pistol now?

A. Heck Thomas taken it.

Q. What kind of a purse that the defendant had?

A. One of these little money purses; he had the gold wrapped up in a little piece of rag.

Q. I thought you said the greenback was wrapped up in a rag?

A. It was, too.

Q. Was the gold and the greenback wrapped up in the same piece?

A. No, sir; the biggest wad of it was rolled up in a kind of a roll in a rag.

Q. I asked you what kind of a purse he had the silver in?

A. It was a little half-round purse.

Q. Buckskin?

A. Buckskin, yes, sir.

Col. BARNES. What color was it?

A. I don't remember; it was a dark color; it might have been a greasy color.

Q. Did it look like that (holding up a black purse)?

A. Yes, sir; it was an ordinary money purse.

Q. Did it have a clasp?

A. I didn't examine it close.

Q. What became of it?

A. I don't know, sir; Mr. Thomas taken everything that he had.

Q. What was done with the pocket book?

A. I don't know.

Q. You don't know whether you would know it if you would see it?

A. No, sir.

Q. Thomas took it?

A. Yes, sir.

275 Q. Do you know whether Thomas took it or left it in the possession of the defendant?

A. I don't know.

Q. Anyway, you didn't get it?

A. No, sir.

JEFF MARSHAL.

Col. CRAVENS. What is your name?

A. Jeff Marshal.

Q. Where do you live?

A. In the Creek Nation.

Col. CLAYTON. Jeff, how many times have you been convicted of larceny?

A. Twice, and then I have been pardoned twice.

Q. Were you convicted of larceny and whipped?

A. No, sir.

Q. What was done with you?

A. They went and convicted me, and then the chief pardoned me.

Q. Why didn't you bring your papers with you?

A. I didn't think I would need it.

Q. Were you not in the penitentiary in the Cherokee Nation?
A. Yes, sir.
Q. How long?
A. I don't know; I got pardoned.
Q. What chief pardoned you?
A. Bushyhead.
Q. What was the charge?
A. Stealing a cow.
Q. What was the charge against you in the Creek Nation?
A. It wasn't stealing?
Q. What was it?
A. It was just a lie.
Q. What was the charge; what did they say they had against you?
A. It was me and a man named ——— ——— was on a trade——
Q. Never mind: what was the charge?
A. It was stealin'; it was about a yearlin'.

276 Q. You were convicted in the Cherokee Nation of stealing a cow and in the Creek Nation of stealing a yearling. How long did you serve in the Cherokee Nation—how long in the penitentiary?
A. I forget.
Q. How long—a year?
A. It might have been a year and maybe longer than that?
Q. How long were you sentenced for?
A. Five years.
Q. Were you in there two years?
A. I don't know, sir.
Q. How long were you sentenced in the Creek Nation?
A. I am tellin' you the honest truth; it was for stealin' a yearlin', and the man he swore a lie——
Q. How long were you sentenced for in the Creek Nation?
A. That is what I am telling you.
Q. Didn't they whip you?
A. No, sir.
Q. Are you sure?
A. Yes, sir.
Q. Is that all you have been convicted for there?
A. I am just tellin' you——
Q. How many times?
A. I just told you.
Q. Only once?
A. Yes, sir.
Q. Ever been convicted here?
A. No, sir.
Q. Wasn't you convicted and tried, and sent to jail?
A. No, sir.
Q. You deny that, do you?
A. I am tellin' you the truth, lessen you want me to tell a story.
Q. Do you know a man up there by the name of ——— ———, who was killed?
A. Yes, sir.
Q. Wasn't you charged with it?

A. No, sir; I was at Talequah then?

277 Q. Why didn't you bring your pardon papers down with you?

A. I didn't know they would be needed.

Q. Didn't these gentlemen tell you you would need them?

A. No, sir.

Q. They knew you had been convicted?

A. No, sir; I don't know.

Q. (To attorneys.) Well, go ahead; of course, if we prove, orally, a conviction, you can prove, orally, the pardon.

Col. CRAVENS. Jeff, Col. Clayton asked you about being convicted in the Cherokee Nation. Did you ever live at Marshaltown?

A. Yes, sir; I moved up there about 17 miles——

Q. There was a kind of a war between the people of Marshaltown and the people of the Cherokee Nation?

A. Yes, sir.

Q. The killing you speak of, Bob Marshal was in that fight?

A. Yes, sir.

Q. Bob Marshal was a brother of yours?

A. I am his uncle.

Q. You wasn't in that?

A. No, sir.

Q. Now, this charge of larceny against you, came out of these troubles between you; you speak about being in jail.

A. Yes, sir; when I started to tell it, he stopped me; it was my brother who stole the yearlin,' and he sold it to me, and I come by it honestly, and when the facts were found out I was pardoned.

Q. You say you live in the Creek Nation?

A. Yes, sir.

Q. Close to Choska?

A. Yes, sir.

Q. You have got a large farm there?

A. Yes, sir.

Q. Plenty of property around you?

A. Yes, sir.

278 Col. CLAYTON. Got plenty of cattle?

A. Yes, sir.

Col. CRAVENS. And horses, too.

Col. BARNES. What about this other matter?

A. The other matter, a fellow by the name of Donald had up a little store, and he wanted me to get him a yearlin,' and I went and bought one for him.

Q. And that was this yearling?

A. Yes, sir.

Col. CLAYTON. I suppose you explained all that to the court that convicted you?

A. Yes, sir.

Q. But still they convicted you?

Col. BARNES. When a man is tried in that court he has no chance.

Col. CLAYTON. Four-fifths of them are colored people; this man that was on the stand last night is an officer of that Nation.

Col. BARNES. He isn't now. (To witness.) You say as far as that case in the Creek Nation is concerned, it was set aside?

A. Yes, sir; if I had thought it was needed, I could have brought my papers along.

Q. There was no sentence of the court in that case?

A. No, sir.

Q. How far from Choska do you live?

A. About three miles.

Q. Do you know this man? (Pointing to defendant.)

A. I have seen him twice, and this makes three times?

Q. Did you know a man by the name of Steadman?

A. Yes, sir; I seen him and the other man twice right in my house.

Q. Tell us when you saw him first.

A. The time I saw them first was the time when I and my wife was comin' from church.

279 Q. That was at home; that is, your house?

A. Yes, sir; they was there wanting to rent land, and that there man said——

Q. They wanted to rent land?

A. Yes, sir.

Q. That was on Sunday. How much land did you have fenced and in cultivation?

A. Three hundred acres.

Q. They wanted to rent part of that?

A. Yes, sir.

Q. Do you know what day that was?

A. I don't know what day of the month, I know it was on Sunday.

W. When was the next time that you saw them?

A. It was on Monday.

Q. How long after the Sunday they were there?

A. They had been down that Sunday and the next Monday passed, and then the next Monday me and Mr. Hoyt was building a house for one of the renters, and they come down there.

Q. The first time you and your wife had been to church, and came back and found them waiting to see you?

A. Yes, sir.

Q. And the next time they came to see you was on Monday week after that, and you was building a house?

A. Yes, sir.

Q. You were busy that day?

A. Yes, sir.

Q. Did they talk anything about their stock.

A. Yes, sir.

Q. What kind of horses were they riding?

A. Steadman there was riding a sorrel mare, and that Mr. was riding a bay blazed horse, and they wanted to trade for my horse, and they said they had a male horse they would trade.

Q. You had a stallion of your own?

A. I didn't have at that time.

Q. They knew you wanted to buy one?

A. They said they would take $300.00 for the male horse, and
280 wanted me to go that evening down there, and I told them I was building the house and didn't want to leave.

Q. How did they speak of this stock when they talked about trading it?

A. He (pointing to defendant) claimed to own it.

Q. How did they speak of themselves when they wanted to rent the land?

A. They said they was in partnership and the last day they was there they said they was in partners in all the stock——

Q. Who spoke of that?

A. That is what I am telling you. When they went to ride away, Alexander was to bring the horse on Wednesday, and that Steadman, he told me, he was going to Muskogee to the fair; and then I never did see them since.

Q. That was on Monday?

A. Yes, sir.

Q. Did you hear Steadman say who owned the horses?

A. He said they was in partnership and they wanted to but corn in partnership.

Q. That is what Steadman said?

A. Yes, sir.

Q. The first time you saw them was on Sunday, and the next time was Monday?

A. Yes, sir.

Q. At the time they started off Steadman spoke of going to Muskogee, and the defendant, Alexander, was to bring the horse over. You don't know on what day this man disappeared, or whether it was on that day or not; anyway, it was on Monday. They was about how far from Choska?

A. Well, about three miles.

Q. State whether it was timber country or open country?

Q. Well, it is about a mile that is prairie all the way, until you get to Orcutt's field, and after you pass Orcutt's field it is timber until it
281 goes, I can't tell how far, but after it passes Orcutt's field it is bottom until it gets to the slough, and when it gets to the slough—it is bottom down to the slough.

Q. How did these men appear to be, on good terms or bad terms?

A. They both talked friendly, but of course when they was there I couldn't tell.

Q. You didn't see anything out of the way?

A. No, sir;

Q. What time did they leave your house?

A. I couldn't tell; all I know, we had been to the house and got dinner, and gone back to work.

Q. Do you know how long you had been at work?

A. No, sir.

Q. Do you know how long they staid?

A. No, sir.

Q. Can you tell anything about the time of day?

A. No, sir; because I don't want to tell only what I am certain of.

Cross-examination:

Col. CLAYTON. Jeff, I suppose when you were being tried you introduced your proof?

A. Yes, sir; that is why the chief pardoned me.

Q. You introduced the proof before the jury that tried you?

A. I don't know what you are speaking about.

Q. I suppose you took your witnesses before the jury to prove that you wasn't guilty?

A. No, sir.

Q. You didn't have any?

A. No, sir.

Q. But, evidently, they found it out; they let you stay in jail. How much corn did these men want to buy?

A. They didn't say; they asked me if I would have some corn to sell if they rented the land.

Q. How much corn did they want to get from you?

A. They didn't say; only a few bushel.

282 Q. Didn't they say they would rent the land if you would let them have the corn; that they had a lot of horses?

A. When they talked about the corn they talked about being partners.

Q. And then when they wanted to sell the horses Steadman himself told you *they* were partners?

A. Yes, sir.

Q. And about the mare?

A. They never said anything about the mare.

Q. Didn't they tell you they were in partnership in all the horses?

A. Not what I am telling you.

Q. How come them to tell you they were buying corn in partnership?

A. I couldn't tell about that.

Q. I don't know; I am just telling you this for you to think.

J. R. TERRY.

Col. CRAVENS. Your name is J. R. Terry?

A. Yes, sir.

Q. Where do you live?

A. I live near what is called Choska, about 18 or 20 miles from Muskogee; about three miles from what is called Choska Store—two and a half or three miles.

Q. On whose farm are you living?

A. On Leo Bennett, the agent at Muskogee.

Q. Where did you live last fall?

A. I lived on Jeff Marshal's farm at the time.

Q. Where was that?

A. It is about three miles east of Choska.

Q. You were there at the time this man disappeared?

A. Yes, sir.

Q. I will ask you if you saw people up there hunting that man

283 and woman after they disappeared?

A. Yes, sir.

Q. Where?

A. I saw them at a man's cotton pen by the name of Tom Merritt.
Q. Who were they hunting for?
A. Mr. House and Taylor Coons.
Q. You saw Mr. House and Taylor Coons?
A. That is what I said was the name.
Q. Where did you see them?
A. At this man's cotton pen.
Q. Armed—any arms?
A. They were armed.
Q. How?
A. They had Winchesters, and I ain't certain about the shotguns.
Q. What day was that?
A. It was Tuesday.
Q. Do you know when the disappearance took place?
A. It was Monday night they told me.
Q. What time of day was it on Tuesday?
A. It was in the afternoon?
Q. Who else was there?
A. Harve Garrison, James Martin, and James Underwood.
Q. Did you see any other people riding around there hunting?
A. That is the only people I saw.
Q. What direction did they go from there?
A. I left them there.
Q. You were there when they rode up?
A. No, sir; they were there when I rode up; I was going up in the corn, and when I passed by the first time they wasn't there and when I came back they were, and they stopped me.
Q. Did they make any inquiry of you?
A. Yes, sir.
284 Q. What?
Col. CLAYTON. Never mind; I object.
Col. CRAVENS. I will ask you what they said they were going to do if they found——, they had guns?
A. Yes, sir; they had Winchesters; I am not certain about shotguns.
Q. What did they say if they found them?
Col. CLAYTON. There are two or three objections to that.
Col. CRAVENS. What did they say?
Col. CLAYTON. I object, your honor.
(Competency of the question argued at length by both prosecution and defense.
Objection sustained by the court.)
Col. CRAVENS. This was on Tuesday?
A. Yes, sir.
Q. The day after Steadman disappeared?
A. Yes, sir.
Q. It was on the day after he was supposed to have disappeared; you do not know of his disappearing on the day that he was said to have disappeared. How long have you been here?
Col. CLAYTON. What is the object of that?
Col. CRAVENS. I don't have any object in it; I don't care how long he has been here.

Q. You live up there?
A. Yes, sir.
Q. And you are down here as a witness?
A. Yes, sir.
Q. You live on the Bennett farm near Choska?
A. Yes, sir.
Q. Do you know Jim Bruner?
A. Yes, sir.
Q. I will ask you if you were present when he had a conversation with Mr. Reed in his office in your presence, and when Mr. Galdwell was present?

A. Yes, sir.

285 Q. I will ask you what he said at that time, if anything, about who bought corn from him; these parties that owned the horses?

A. Yes, sir; he said first one and then the other.
Q. What did he say about who paid for the corn? Did you hear him say who paid for the first corn?
A. I did; but I can't say who it was.
Q. You are not positive who he said it was?
A. I remember something about some talk, but I can't remember which one it was.
Q. Were you at the place where the body was found?
A. Not right on the ground; as near as I was was on the road.
Q. You were not out where the body was?
A. No, sir.
Q. In this conversation which was had at Mr. Reed's office, I will ask you if Jim Bruner said anything about hunting over that ground after Steadman disappeared?
A. Yes, sir.
Q. What did he say about that?
A. He said, it seemed to me, it was on Wednesday he was there, and there wasn't any body there, was about the remark he made; he said he was hunting right along there where the body was, and there was no body there then; that is what he said.
Q. It was on Wednesday, you say?
A. I believe it was on Wednesday.
Q. Did he say he was there in the daytime or in the nighttime?
A. It was daytime.
Q. And there wasn't anybody there?
A. That is what he said.

Cross-examination:

Col. CLAYTON. You have been near the place?
A. Yes, sir.

Q. A man might pass there 40 or 50 times and not see the body?

286 A. Yes, sir.

Q. He might hunt through there a thousand times, you think; he could have hunted right through the place?

A. I don't know about the thousand times; a man might pass through there, and again he mightn't.
Q. What time of day was it you saw House and this man on Tuesday?

A. It was in the afternoon; I had gathered one load and started back to make another one.

Q. What day was that?

A. It must have been somewhere about the 22d; it was fair week; it was the 21st or 22d.

Redirect:

Col. CRAVENS. Who made that fence along there on the north side of Meagher's farm?

A. I helped make it.

Q. I want to call your attention to that north line of fence, the fence that runs east and west on the north side of that field; did you help make that fence?

A. Yes, sir.

Q. Was there a fence row cut out there?

A. Yes, sir.

Q. What kind of a place is that through there; what kind of land is it, upland or bottom land?

A. It is river bottom land.

Q. Is it rich soil or poor?

A. It is rich soil, very rich.

Q. How wide was the fence row cut out?

A. The fence row was cut out 30 feet, and the fence put in the center.

Q. When was it cut out?

A. During the winter, a year ago.

Q. The past winter, a year ago?

A. Yes, sir.

Q. That is, it was cut out the winter before these parties disappeared?

A. Yes, sir.

Q. I will ask you if you were along there during the summer and fall?

A. Along that fence row?

Q. Yes, sir.

Ye , sir.

287 Q. What grew along the fence on the land before the fence row was cut out?

A. It was weeds; horse weeds.

Q. What was the growth of timber?

A. There was 'most all sorts of timber; all kinds of timber that grows on the bottom land.

Q. After that timber was removed did anything come up there?

A. Yes, sir; weeds.

Q. What was the hight and thickness of these weeds last fall?

A. They were pretty thick.

Q. How high—grew up as tall as a man's head, or higher?

A. Yes, sir; the horse weeds did.

Q. Were they thick?

A. Yes, sir.

Q. All grew up along the fence?

A. I do not know about that; they grew all along, and as a general thing there was weeds all along.

Q. They grew up thick, as high as a man's head?

A. Oh, yes.

Q. These weeds grew up very fast and very tall; were they ever cut out after that, do you know, or were they left remaining there?

A. I think it was in the winter a portion of them were cut down.

Q. Where were they cut down?

A. They were cut, to my knowledge, from Perry's cotton patch down a ways, but whether they was cut all the way I can't say.

Q. Commenced at the west corner and cut east?

A. Yes, sir.

Q. There was a cotton patch in the northwest corner of the field?

A. Yes, sir. There was 55 acres of cotton in the northwest corner of the farm; the weeds were cut between where the body was found and
288 the cotton patch; between the Rabbit House and the body they was-n't cut.

Q. That is your recollection, that they were cut from the body down to the cotton patch. That would be west of where the body was found, towards Choska; east of that point, towards the house, they weren't cut?

A. No, sir.

Q. Were you at the place where the body was found?

A. No, sir; I stood in the road while Mr. Lipscomb went in to where the body was.

JUROR. I would like to ask a question if it would not be out of place. He said, if I understand, that he stood in the road while Mr. Lipscomb went to the body. Could he see him from where he was?

A. Yes, sir, I could see him plain; there seemed to be an opening there.

Col. CRAVENS. Was he on horseback?

A. Yes, sir.

Q. And you stood in the road?

A. Yes, sir.

Q. Opposite where the body was?

A. Yes, sir.

Q. How is it from the road towards the body; I don't mean back, north of the body, but from the road to the body?

A. It is timber in there, of course, but there is a place from the road out there; there ain't anything but the undergrowth; I could see that they had a man under arrest. We was going along and we met them, and they went out to the place and I waited until Mr. Lipscomb come back.

Q. You could see the whole party plain?

A. Yes, sir.

Q. You could see a man on foot as well as on horseback?

A. I believe I could see a man down there, it looked so low,
289 was the way it was.

Re-cross-examination.

Col. CLAYTON. You were on your horse?

A. I was setting in my wagon.

Q. You were not on the ground?

A. No, sir.

Col. CRAVENS. You helped make that fence; I will ask you if that place can be seen—if you can see a man from the Rabbit house, where the body was found?

A. I will tell you about that; I won't say positive that you could or could not, but the shape the ground is in, I would think you could not, because there is a high place.

Q. Do you think a person could see a man from any where opposite the house, between the house and the fence, to the place in the road, opposite the body?

A. It would be very doubtful

Q. And the reason is, as you say, because there is a high place in the ground?

A. Yes, sir.

Q. And then the land lays low, both ways from this high place?

A. Rather so, yes, sir; it appears from the high places towards the Rabbit house that it is lower, but from there the other way it is nearly level, and the drop is towards the Rabbit house.

Col. CLAYTON. Mr. Terry, how about the weeds between that place and the Rabbit house?

A. Right around the house, there was scarcely any weeds, because the fa'ily lived there.

Q. This fence row was cut out both sides of the fence?

A. Yes, sir; there was a big road, a public highway there.

Q. If the ground was level, could you sit at the Rabbit house
290 and see to the body?

A. I don't believe you could, because the timber runs out to the fence.

Q. Suppose you were standing out along the fence?

A. I suppose you could look up the fence, if you was beyond the timber, and the ground wasn't too high.

Col. BARNES. The fence is in the center?

A. Yes, sir; fifteen feet on one side, and fifteen feet on the other side.

Q. Standing on the inside of the 30 feet clear, on the inside of the fence, could you see a horse, or two horses, down to where the body was found?

A. I might, but it would be very doubtful.

Q. Did you ever examine it with that in view?

A. No, sir.

Col. CLAYTON. If a man were to swear that he did see anything of that kind, you wouldn't disbelieve him, would you, upon the knowledge that you have?

A. I wouldn't have any right to.

Q. Because you haven't examined it right closely; did you ever examine it with that in view?

A. No, sir.

HARVE GARRISON.

Col. BARNES. What is your name?

A. Harve Garrison.

Q. Where do you live?

A. In the Creek Nation, near Choska.

Q. How long have you lived there?

A. I have lived there about fifteen months.

Q. What have you been doing there?

A. Been at work on Lipscomb's place, clearing land.

Q. Do you know this man that was killed up there, Steadman?

291 A. I have seen the man.

Q. Have you seen the defendant?

A. Yes, sir; I have seen him.

Q. You were at the place where these remeains were found, I believe; the remains that are said to be the remains of Steadman?

A. Yes, sir.

Q. Did you help bury him?

A. No, sir; I didn't.

Q. You know where the place is; you have been to the place then, and since?

A. Yes, sir; I have been to the place some four or five different times.

Q. About how far is that from the store at Choska?

A. About a mile and a quarter; probably a little over.

Q. How far is it from the body to the corner, going towards the store?

A. Probably about a mile and 200 yards; the string is a mile and a quarter long; a mile and 100 yards, maybe, to the corner.

Q. The north string of Meagher's field is a mile and a quarter long; there is 800 acres in there, and you say the north string is a mile and a quarter long?

A. Yes, sir.

Q. And you think it is about a mile and 100 yards to the corner?

A. Yes, sir.

Q. Going on towards the corner, towards the store, west, there is kind of an open flat place there, before you come to the fence, on the opposite side of the Lipscomb fence?

A. I believe it is.

Q. How wide is that space?

A. You mean on the north side of the fence; well, that is prai-

292 rie; there is a little prairie there near the corner of Lipscomb's field.

Q. How wide is that?

A. Well, it is different widths; some places it is—tolerable long towards the store; it is about 200 or 250 yards from the corner of that field to the Lipscomb field.

Q. How far is it from the corner of the Lipscomb field down to the store?

A. It is a little over a quarter of a mile.

Q. From the southeast corner of the Lipscomb field to the store? More than that, isn't it? How long is that string of fence, on that side?

A. Well, it is about a half or three-quarters.

Q. It is not a mile?

A. No, sir.

Q. Whereabouts is the store situated on that line?

A. Well, it is situated closer to the east corner than to the west.

Q. You make it from a quarter to a half a mile from the southeast corner down to the store?

A. Yes, sir; somewhere that distance; I don't know exactly how far it is.

Q. According to that, it would be over a mile and a half from the store to the body?

A. I don't think it is over a mile and a half.

Q. A little over a mile from the body to this prairie, and then 200 or 250 yards to the corner of the Lipscomb field, and then it is something over a quarter of a mile to the store?

A. Well, you see, this corner is not right straight.

Q. Do you remember the distance the body was from the road?

A. Yes, sir; right close to the road there was a big stump, and it was 57 steps from the body to that stump, and then it was about
293 *about* two steps to the fence, making about 59 steps to the body.

Q. How does the road run there at that particular place?

A. Well, there is one road where it had been made straight, and there was a slight circle in the road, and you would turn off and go around a tree, on account of a bad place in the road.

Q. It was 57 steps from the tree to the body? The width of the road was about double there—I mean where it went around the obstruction?

A. Yes, sir.

Q. How was it, now, from that road to the body, as to whether it was pretty open from the road back to the body, or timber close there, or how was it; that is, from the road back to where the body lay?

A. Well, there was sorter of a little path run out to the body.

Q. There was some large trees pretty close?

A. Yes, sir; big oak trees.

Q. You could see to where these trees were?

A. Yes, sir.

Q. Immediately around where the body was buried were there any openings in there?

A. Only what had been eat out by the hogs.

Q. How was it as to the trees immediately around where the body was buried? Was there any trees except a little tree right by the grave?

A. Well, just north of the body there was a big oak tree, I expect two or three feet thick.

Q. That was north of the body?

A. Yes, sir.

Q. I will ask you if you stood in the road and looked out towards the body?

A. Yes, sir.

294 Q. The wilds were thicker from the body north than they were between the road and the body?

A. Yes, sir; there was about two little saplins from the road to the body, probably three or four inches through.

Q. Do you know where that Rabbit House was?

A. Yes, sir, I do.

Q. Did you notice there where a tent had been put up?

A. Yes, sir.

Q. At which side of the house was it?

A. Off a little east of the house.

Q. Did that house stand against the wire fence or off from it?

A. The tent was 23 steps from the fence.

Q. How much nearer was it to the fence than the house?

A. Two or three steps.

Q. That would make the Rabbit House about 26 steps from the fence?

A. Yes, sir.

Q. Now, Mr. Garrison, just describe how the ground was, looking west from the Rabbit House towards the store, whether there was any timber, and just describe how it was. How about the large trees?

A. There was lots of them up there along the fence.

Q. How near to the fence?

A. About 10 or 12 feet.

Q. Standing there and looking towards the place where this body is said to have been found?

A. Yes, sir.

Q. How was it back east?

A. It was still worse; there was a little open place around the house; there was just a little place where it had been cleared out.

Q. There was no yard fence?

A. No, sir.

295 Q. There was an open place around the house?

A. Yes, sir.

Q. Where the house was, and along near the string of fence, how was it, right along east?

A. There was greenbriar thickets, higher than a man's head.

Q. East of the house?

A. Yes, sir; they run up within 10 or 12 feet of the fence.

Col. CLAYTON. Fifteen feet, I reckon.

Col. BARNES. Did you take observations from different points, standing there at that Rabbit House, and east of it, in close to the wire fence; what could you see, and how could you see it?

A. Yes, sir; I did.

Q. Do you remember Col. Cravens going up there and standing near where the body was supposed to be, or out in the road opposite that place?

A. Yes, sir.

Q. Did you try to see in any other different directions?

A. Yes, sir.

Q. I will ask you if there was any way you could see him at all; just describe to the jury how you could see him.

A. I could not see him from the inside of the field at all.

Q. How did you manage to see him?

A. I got outside in the road, and he took his handkerchief and waived it, and I could just see him from his neck up.

Q. You didn't see the handkerchief until he waived it?

A. No, sir; I didn't.

Q. That was from the outside?

A. Yes, sir.

Q. Didn't you stand right at the fence, and step back one step

296 from the fence?

A. No, sir; I couldn't see him at all.

Q. Until you got outside?

A. No, sir.

Q. Then you didn't see him until he waived his handkerchief, and then you could see the top of his head?

A. Yes, sir.

Q. Where were you at that time?

A. I was right out in front; in the road, right opposite the Rabbit House.

Q. North of the Rabbit House?

A. Yes, sir.

Q. He had gone to a place opposite where the body was at?

A. Yes, sir.

Q. Do you remember that Rabbit House, what sized house it was?

A. It was a small house; a log house.

Q. How high was it?

A. I don't know; probably ten feet from the ground to the top.

Q. Very small house?

A. Yes, sir.

Q. Do you remember how far it was from the tent; how far was it from the tent to the kitchen, did you notice that?

A. It was about four or five steps.

Q. And the tent was about three steps nearer to the road thn t he house?

A. Yes, sir.

Q. It was about 23 steps from the road to the line where the tent had been sitting?

A. Yes, sir.

Q. And about three steps nearer the road than the cabin?

A. Yes, sir.

Q. But you think the tent was about how many steps east of the cabin?

297 A. Two or three; the tent was a little nearer the road than the house was.

Q. I will ask you if you stepped from a point about opposite the house, and the tent, to the northeast corner of the field; tell us, if you remember, how far it was?

A. Yes, sir; I can tell you that; it was 110 steps from opposite the tent, right out in the road, to the northeast corner of the fence—it is 110 steps.

Col. CLAYTON. That is, 110 steps from the northeast corner; that would be a big difference. That is in an opposite direction from the body?

A. Yes, sir.

Mr. BARNES. Was there a gate there, going in the direction of the store, along that wire fence?

A. Yes, sir.

Q. From this point opposite the cabin, how many steps was it down to that gate going west?

A. 70 steps from the Rabbit House, right straight to that gate; the Rabbit House was 26 steps back.

Q. You stepped from the Rabbit House back near the corner of the house, to the gate, and that was 70 steps?

A. Yes, sir.

Q. Then did you step it from opposite the Rabbit House, to the road?

A. I stepped all along opposite the Rabbit House, but don't recollect the distance.

Q. Was that 70 or 78 steps?

A. It was 70, to my recollection.

Q. You don't remember to have stepped it from the corner to the gate then from about here about on a line of the corner of the cabin to the gate?

A. I don't recollect.

Q. You stepped it down opposite the body?

A. Yes, sir.

298 Q. How far from the gate to opposite the body?

A. To the Rabbit House, was 220 steps.

Q. You did not step it directly from the gate?

A. No, sir; opposite the Rabbit House right straight to the road opposite the body was 220 steps.

Q. Did you notice any road near the Rabbit House, a road rather bearing off northeast?

A. Yes, sir; I did.

Q. (Showing map.) Did this road bear off from this side, or from this side of the Rabbit House?

A. Well, it was a little east of the Rabbit House, that road started out.

Q. How many steps east, to draw a line from the Rabbit House?

A. I think 25 steps.

Q. It was near the Rabbit House, and east of the Rabbit House?

A. Yes, sir.

Q. And it bore off a northeast course?

A. Yes, sir.

Q. Do you remember stepping the distance from this corner across to the road here?

A. Yes, sir.

Q. That is, this road that bore off from near the Rabbit House, north, to the northeast corner?

A. Yes, sir.

Q. It was 35 steps; then it bore off about as laid down here, did it?

A. Yes, sir.

Cross-examination:

Col. CLAYTON. In going down from Cochran's, going east, towards the place of the killing, you would pass by the Rabbit House, within 26 steps of it?

A. Yes, sir.

Q. The road runs right along the field, opposite where the tent

299 was.

A. Yes, sir.

Q. If you had been sitting in the tent, or in the house, you could see people pass along that road.

A. Yes, sir; I would think you could; the door of the house, though, was on the south side.

Q. Which way did the tent open?

A. I don't know.

Q. It was 110 steps back from the tent to that northeast corner?

A. Yes, sir.

A. And 220 steps up opposite the body from the tent to that place?
A. Yes, sir.
Q. What was the reason you could not see Col. Cravens?
A. Well, there is a swollen place in the ground.
Q. How close to the body?
A. Well, it is a gradual long slope.
Q. How close to the body?
A. I judge the highest place in that sloping ground would be about that gate, 70 steps from the Rabbit House.
Q. But the nearer you got towards the house, the more of Col. Cravens you could see; it sloped up from where he was to the gate?
A. I didn't try, but I guess I could.
Q. Of course the nearer he would come to you, the more of him you could see?
A. Yes, sir; I expect.
Q. If he came 30 or 40 yards nearer to you, you could see more of him?
A. Yes, sir.
Q. Did you ever hunt squirrels on hirseback?
A. Yes, sir.
Q. And see them in big trees before you get to them?
A. Yes, sir.
Q. Did you stop before you got to the tree?
A. It is just owing to how the squirrels is.
300 Q. You have hunted squirrels. Don't you know that it is the universal habit of the people to get off their horses before shooting at all, and look and see the squirrels late in the evening, frisking around; don't you know you would stop your horse if you were hunting them, and go and hitch him before you got to the place?
A. I might; a heap of people wouldn't.
Q. I am asking about you?
A. I would.
Q. There is a big tree where the body is laying?
A. Yes, sir.
Q. Any more around there—big trees?
A. Yes, sir.
Q. Any more big trees east of that tree?
A. Yes, sir.
Q. If the horses had been hitched, then, out there 20 or 30 or 40 yards nearer to the house than at a point just exactly opposite the place, they could have been seen, couldn't they, from a place opposite the house, 30 or 40 yards from the body, towards the east corner of that house?
A. Yes, sir; you could see a man from there, down to the body.
Q. Very easily?
A. Yes, sir; without any trouble.
Q. Do you understand what I am asking you?
A. Well, I think I do. I understood you to ask me if I could see a man 30 or 40 yards up the road from the body.
Q. No, sir; if a man was 30 or 40 yards from the body, to the house, and you stood opposite the house—suppose Col. Cravens had gone up that hill, 30 or 40 yards towards you——

A. Yes, sir; I could see him plainly.

Q. You could see him inside of the fence, too?

A. I don't know.

301 Q. Why could you have seen him more plainly?

A. Because the ground gets higher as it comes to you.

Q. Col. Cravens got in the lowest place he could find, didn't he?

A. He got opposite to the body; I seen where he stood.

Q. You could see him plainer because he would come up the hill towards you?

A. Yes, sir.

Q. It would have been no trouble?

A. It wouldn't, if a fellow had a mind to look.

Q. I don't suppose a man looks with his back turned toward people.

A. Of course, it is supposable a man was lookin'.

Q. You were looking?

A. Yes, sir.

Q. Then you had a mind to look, and leave the mind to look off. It is only 220 yards from the house to that place——

A. Yes, sir.

Q. ——you speak of, to the body?

A. From opposite the house.

Q. You spoke of there being a good many green briars toward the northeast corner, but from the house, up the other way, it isn't so?

A. No; not so much—bad thicket.

Q. When were you there?

A. I disremember the day.

Q. I want to know; I don't care for the exact date.

A. It was along about two months ago, I guess.

Q. Had the weeds grown?

A. No, sir.

Q. Hadn't the weeds been cleaned out along there?

A. They had been mashed down like.

Q. I will ask you if they had not cut them with briar hooks

302 between that house and the body on the inside of the fence for fifteen feet, all the way along there?

A. Yes, sir; ten or fifteen feet wide.

Q. It is not true that they had not been cut down between the house and the body?

A. Well, there was weeds standing from the house——

Q. I expect may be there was a weed or two, lots of them, but they had been cut.

A. They had been mowed—cut—next the fence, but not that far from the house, straight on to the body.

Q. You looked down there from the house, 70 steps to the gate, and could see without any trouble?

A. Yes, sir.

Q. Then, if next to the house they had not been cut, how could you see?

A. I stepped out from the house.

Q. How did you get there?

A. I followed the road.

Q. No trouble to see down there?

A. No trouble to see the gate.

Q. That is 70 yards and that is next the house. How far had they been cut down towards the house?

A. A space of 10 or 12 feet wide.

Q. From the body clear to the house, they were cut?

A. There was a space of weeds cut right by the side of the fence 10 or 12 feet wide.

Q. From the fence, out 10 or 12 feet, clear down to the house opposite the house?

A. Yes, sir.

Q. And clear to the cotton patch?

A. Yes, sir; all the way that north fence from opposite the house
303 along up the single fence.

Q. Nearly half a mile?

A. Yes, sir; all around the field.

Q. All around the field, a space of 10 or 12 feet wide, these weeds had been cut out?

A. Yes, sir.

Q. The weeds had been cut down with a briar hook since they had grown. You are not talking about the clearing that was done when the fence was put up there, but about the weeds that had grown up after that?

A. Yes, sir.

Q. You spoke about the road opposite the body, about an old stump. The road runs along the fence?

A. Yes, sir.

Q. Until you get opposite the body?

A. Yes, sir.

Q. And there was a rough place and a stump?

A. Yes, sir.

Q. And the wagons wanting to avoid the rough place would take to the left as you went east?

A. Yes, sir; that was two months ago.

Q. You don't know how it was when the man was killed?

A. No, sir.

Q. The road had run along the fence but during the winter it became muddy and they turned to the left?

A. Yes, sir.

Q. The probabilities are that the road wasn't there at the time of the killing?

A. Probably not.

Q. How did it look to you?

A. It looked like a plain road and made during muddy weather.

Q. That fence was a mile and a quarter long?

A. Yes, sir.

Q. How do you know?

A. Mr. Meagher said so.

Mr. BARNES. As a matter of fact, do you know how long it has
304 been since the weeds were cut out?

A. No, sir.

Q. If Meagher ever had it cut out how long ago has that been?

A. Last fall sometime; of course I wasn't there.

Q. Don't you know there was a good deal of obstruction up and down that fence there?

A. Yes, sir.

Q. Many places wasn't there fallen timber, trees, and things?

A. Yes, sir.

Q. Didn't they have to clear them out frequently?

A. Yes, sir

Q. You spoke of some obstructions—some of them did—that was rolled up in there—logs?

A. Yes, sir; there was some log heaps right out between the house.

Q. Do you remember whether or not these weeds and briars were growing up among them?

A. Yes, sir; right straight across to the body there was weeds as high as a man's head.

Q. All around the edge of that timber?

A. Yes, sir.

Q. Close to the timber?

A. Yes, sir.

Q. Where the open space and the timber would meet, there was weeds?

A. Yes, sir.

Col. CLAYTON. How far was Col. Cravens standing from the fence?

A. He was standing in the road, right along by that big stump, at the edge of the road.

Mr. BARNES. If you stood on the inside you couldn't see him at all, but after you got in the road you saw him; there was a kind of a swell and then the ground went over?

A. Yes, sir.

305 Q. When you got to the east corner of the field, could you see two men coming riding along there—while I was there, you remember that?

A. Yes, sir.

Q. And you looked up in that direction, and when they got up to a point you thought was opposite the body you saw what?

A. I could just only see them on the horses about this far up.

Col. CLAYTON. That was 110 steps from the house?

A. Yes, sir.

Q. Towards the slough?

A. Yes, sir.

Mr. BARNES. You were not all the way back to the corner?

A. I was down pretty near to the corner.

Q. And you happened to see a couple of men come along there?

A. Yes, sir.

Q. A couple did come along while you were standing there?

A. Yes, sir.

Q. And your observation from that point was you could just see them along here, while they were on their horses?

A. Yes, sir.

Col. CLAYTON. How far could you see those two men before they turned the hill going down—were they coming from the body?

A. Coming from Choska.
Q. Did you get to see the horse' feet?
A. I couldn't see until they got——
Q. When they got on top of the hill?
A. Yes, sir.
Q. That was at the gate, 70 yards from the house, wasn't it?
A. I don't know; it is somewhere right along there.
Q. The highest place is 70 yards from the gate?
306 A. I would judge it to be.
Q. Did you observe it?
A. Yes, sir.
Q. And you locate that at the gate 70 yards from the house?
A. Yes, sir.
Q. Then they began to go gradually down?
A. Yes, sir; going either way, right along by the gate was about the highest place; a man going either way would gradually go down hill.
Q. Was that just a mere swell?
A. It was a long, gradual slope; not just a hill, but a slope.

COL. WILLIAM M. CRAVENS.

Mr. BARNES. You heard Mr. Garrison's statement, where you stood in the road?
A. Yes, sir.
Q. Where did you stand when he was down opposite the house; first, how was it from the body to the road?
A. It is open timber, small saplings from there out to the body; say the road runs along here, there would be the body; right around in here appears to be more open than back to the body.
Q. It is a little thicker on either side?
A. Yes, sir.
Q. It would simply be more open from the body out to the road than anywhere else along?
A. Yes, sir.
Q. Was it open enough so that you could see persons out there?
A. Yes, sir; I think I left you and Mr. Garrison out there and
307 stepped back to the stump to the road; there is a big stump standing rather between the road and the fence, right against the fence, as I recollect it, and I could see you and Mr. Garrison back there, and I think we held some conversation between one another.
Q. At the time he spoke to you to hold up your handkerchief, where were you standing?
A. On a direct line from the body up on the ridge; I had on a black hat, and I put the handkerchief over my hat, and stood in the road.
Q. Then what after that?
A. After some time, I believe somebody hallooed up there, one or the other of you, and I took my handkerchief off and waved it. I first put it over the top of the hat, then I think one or the other of you hallooed, and then I took it off my hat; I had been standing with the handkerchief on the hat up to that time.
Q. You were standing in the road, between the body and the fence?

A. Yes, sir.

Q. You have described the ground, going to a point opposite the cabin; how did the ground lay, west?

A. Pretty much as Mr. Garrison describes it; there is, somewhere between the corner of the field or between the house and the body, a rise in the ground; it appears to slope up from where the body was, or opposite it, and perhaps some distance back; I mean west; it slopes up from that direction east until you get to the top of it; then it slopes down east to the slough.

Q. He speaks of the top of it as being near the gate?

308 A. My recollection is it was west of the gate.

Q. You don't remember how far?

A. No, I don't; it is between the house and where the body was; I think west of the gate, because the gate is not a great ways from the house; but there is a raise and it slopes back to the body, and slopes back to the slough gradually.

Q. Do you remember how the appearance of things were inside of the field?

A. Particularly from the gate out west, it is a dense thicket.

Q. How near did it come to the fence?

A. It came up within 15 or 20 feet; it looked like the fence row was just cut out; I didn't notice the width of the fence row; I suppose 20 or 30 feet; there was some logs lying there, or a log pile, northwest from the house, inside of the field.

Q. Any weeds growing?

A. I don't remember at that time; it was in April when we were there, the 12th or 13th; it was Saturday, the first week of the Muskogee court; I went up on the road, northeast; I think we stepped up to see how far it was to Cochran's house; I don't remember what it was; we then went on near the slough; then we went back, and I think Garrison stepped across from the road to the northeast corner of the field; I don't know what that distance was.

Cross-examination.

Col. CLAYTON. You went there for the purpose of measuring this land?

A. Yes, sir.

Q. But when you were standing with the handkerchief, you

309 couldn't see them?

A. No, sir.

Q. Did you look for them?

A. Yes, sir; I looked right up, the side of the fence for them.

Q. They say *them* saw you?

A. I didn't see them; of course they came finally down to where I saw them.

Q. I mean at the time you were opposite the house?

A. I think I did.

Q. In going east you ascended when you got up a little distance?

A. Yes, sir.

Q. How far did you have to go, going east from the body before you reached the highest point?

A. Of course this would be a mere guess with me, my recollection is it is somewhere the crown of the ridge would be near midway the distance between the house and where the body was?

Q. Which is steepest, the west side or the east side?

A. I don't think there is much difference; I rather think the slope is longer east, because it runs back to the slough.

Q. The slope on the west side would be a little steepest from the body, going east?

A. Well, I think likely it is; I don't know there is any difference.

Q. Where did you take your position?

A. Right south of the body.

Q. You did not experiment then from there by going further east to see how far you would have to go east before a horse could be seen from that house?

A. No, sir; the only experiment was with this horse that Garrison spoke of coming up from that direction.

310 (Recess—ten minutes.)

JOSEPH CROW.

Col. CRAVENS. Where do you live?

A. About three and a half miles from Choska.

Q. What direction?

A. Southeast.

Q. Do you know where the ferry on the road from Muskogee to Choska is?

A. Yes, sir.

Q. Do you live on that road?

A. Yes, sir.

Q. Do you know Mr. Alexander here?

A. I have saw him a few times.

Q. Did you see Mr. Steadman, too?

A. Yes, sir.

Q. When did you first see them?

A. They were down on the prairie, south of Scott Gentry's, kind of in the bend of the river; we call it Wild Horse prairie.

Q. Was that near Jim Bruner's?

A. Yes, sir.

Q. You first saw them there?

A. Yes, sir.

Q. Were they camped when you saw them?

A. They were traveling on horseback; one man had a sack of corn.

Q. Did they have a wagon with them?

A. No, sir.

Q. Where was their camp?

A. At Bruner's.

Q. Did you see them at camp at Bruner's.

A. I saw that gentleman at camp, but I didn't see Steadman.

Q. Did you have any talk with him about a trade?

A. I spoke to this man Steadman one morning about a trade; if he had any ponies he wanted to trade, and he said: "No," he had no ponies, "but

my partner"—he was off, I reckon, two or three hundred yards;
311 he was the one had the sack of corn; it seems as though Steadman was going around the horses; they were feeding around there on the ground; it seems as though he was gathering them in a bunch together when I first rode up to him, but I didn't know either one of the gentlemen by name at that time. Since that occurred I learned.

Q. What was it he said?

A. He said: "You better see that man over yonder; that is my partner; he will probably trade with you, but I have no ponies to trade." I said: "I supposed you had trading stock." He said: "No, we have horses to sell," but maybe he would trade them—his partner's, though he said they didn't have, I think, but two or three ponies; I am not sure which one—two or three, one. Then I asked him how cheap were the stock, and he said from about forty-five dollars up as high as a man wanted to go.

Q. Did you see Alexander and talk with him?

A. He said: "You better see my partner, he may trade with you." I didn't go to Alexander; I was hunting a yoke of cattle, and he was off a little ways, and I seed he had no ponies—nothing but horses, then I didn't go. It was just a pony I had I wanted to swap, and he said he had horses to sell.

Q. Did you see them any more after that before Steadman was missing?

A. I saw them one evening again down about nearly the same place on the prairie, gathering their horses; before that time they were driving them, going towards Bruner's house; they had a bunch all rounded up.

Q. Did you have a conversation with them then?

312 A. No, sir; only just spoke to them good evening; I rode along with them a good ways, and I turned off and went back on the ridge.

Q. Do you know when Steadman was said to have disappeared?

A. I know pretty near about the time; at least I met that gentleman there next morning.

Q. Did you hear of his being missing?

A. I saw that gentleman there next morning, and he said his partner was lost that evening.

Q. Had you heard of him being gone before you saw him?

A. No, sir.

Q. Where was it you saw him?

A. Near the corner of Meagher's farm.

Q. When was that, now?

A. Tuesday morning; he said his partner was lost Monday evening.

Q. Did he make any inquiry of you about him, or ask you if you saw him?

A. Yes, sir; he asked me where did I live. I told him back on the other side of Meagher's farm, somewheres near the ferry. I was then on the east line of fence, going north.

Q. Which way was he going?

A. South.

Q. He was going south, along the east side of the farm?

A. Yes, sir.

Q. And if he came from Choska, he would have passed by the James-Rabbit house.

A. Yes, sir; I guess he was a quarter of a mile south of the Rabbit house when I met him. He asked me where I lived, and I told him down next the ferry, and he says: "You have not seen nary stray man down in that way, have you?" I told him, no, sir, I hadn't. I said: "A stray man?" I told him no, I hadn't seen any stray man at all. He said: "Me and my partner was out yesterday evening on the prairie hunting, and," says he, "we come down close to that little shanty,
and there was some hounds running—he didn't say in what direc-
313 ion—"and he got off the horse and said he would walk over across
the farm, and maybe he could kill a deer." I told him no, I hadn't seen him. He thought probably he got lost. I said if he kept the fence all the way around, he would probably get to camp; the second house is an old man by the name of Burris, and if he came to either one of these houses they could direct him. That is what I told him. I said if he went back north, he would soon get to some place that he would know where he was. Then I was hunting cattle, and I just rode right on.

Q. What did he do; did he go on the way you told him these people lived?

A. Yes, sir; on south.

Q. Was there anybody with him?

A. No, sir.

Q. What time in the morning was that?

A. I think it was about 8 o'clock; I got out tolerable early that morning.

Q. Did you see him any more that day?

A. Yes, sir; I saw him, I guess, about nine or ten o'clock that day.

Q. This was early in the morning when you first saw him?

A. Yes, sir.

Q. Between nine and ten o'clock, where did you see him?

A. Back down there near where their horses' ranch was, near Wild Horse Prairie.

Q. When you saw him he was going towards the south side of Meagher's farm?

A. Yes, sir.

Q. And the next time you saw him down in the neighborhood of the ranch, where the horses was?

A. Yes, sir.

Q. Did you talk any with him down there?

A. Yes, sir; I asked him had he been to the houses; he said he had
and his partner hadn't come there; he said he didn't know what
314 to make of it, and asked me had I been around much since I left
home; I told him I hadn't; I just come around the north side of the fence and found out that the cattle I was looking for wasn't up there. My oxen had on a big bell, I could hear it a quarter of a mile, and I just kept the road and come towards Lipscomb's store, and I crossed the road, though I went in between that and Gentry's farm, and there was some men out there working at a log and I made some inquiries of them about my oxen, and the men said they didn't see them to-day; says they, "How long has the cattle been gone?" He said, "You live down next the ferry?" I said, "Yes."

Col. CLAYTON. Who was the man was talking to you?

A. I don't know.

Col. CRAVENS. Did you learn anything there about the man being gone?

A. When he asked me if I lived next the ferry I told him I did.

Col. CLAYTON. Who was this man?

A. I don't know.

Q. Then never mind.

A. I just inquired of him about my oxen.

Col. CRAVENS. Did you get any information there about this man being gone, and who he had gone with?

Col. CLAYTON. Never mind, now.

Col. CRAVENS. If the court please, I want to show by him he got information there that this man had gone off with a woman, and when he met Alexander down there after that, he communicated that to him and told him he had gone off with a woman; that he heard it.

Col CLAYTON. If you want to prove this man told the defendant, you can prove that.

315 Col. CLAYTON. Did you tell this defendant you heard that his partner had gone off with the wife of Mr. House?

A. I told him I heard he went off with a woman; I didn't know House and his wife at that time.

Q. Did you tell him when you met him at nine or ten o'clock that you heard that his partner had gone off with a woman?

A. Yes, sir; I told him a certain person told me that morning after passing him the first time.

Q. Then you communicated it to him?

A. Yes, sir.

Q. You don't know who you learned it from?

A. No, sir; there was 75 or 80 men down in that bottom, and I didn't know ten of them. There is a great many just moved in there.

Q. I will ask you if this wasn't thickly settled in the last year with white people?

A. Yes, sir; altogether settled the last year.

Q. That is a large bottom?

A. Yes, sir.

Q. Have you any idea how many families have settled in there last year?

A. Not less than 40 or 50 families.

Q. Did you see the defendant after Steadman's body was said to be found up there?

A. Yes, sir.

Q. Where was that?

A. He passed by my house and said he was going to Muskogee to make a report about his partner.

Q. Did he go to Muskogee that day?

A. No, sir; he went down to the ferry, and the ferryman was away; he passed back late in the evening. He said he was going to notify the agent. He said he was going to make his report.

Q. Did you see him the next day?

A. Yes, sir; next morning, he was on his way to Muskogee then.

Q. Was the ferryman away the evening before?

A. Yes, sir.

Q. You knew he was away from the ferry?

A. Yes, sir.

316 Q. Then the next morning you saw him again on his way to Muskogee?

A. Yes, sir.

Q. Did he go that day?

A. I don't know. I just saw him go by; I didn't see him as he returned.

Q. Your place is on the road?

A. Yes, sir; my house isn't twenty yards from the road.

Q. How far do you live from the ferry?

A. About two miles west.

Q. Up the river?

A. Yes, sir.

Cross-examination:

Col. CLAYTON. Joe, you have been here before?

A. Yes, sir.

Q. What were you charged with?

A. Never been charged with anything.

Q. Wasn't you tried here once?

A. No, sir; you ought to know.

Q. There is four years slipped since you and I used to run together?

A. No; the court never slips.

Q. Now Joe, you saw these boys before the killing?

A. Yes, sir.

Q. And you say they claimed—that they came to you, and you wanted to trade a horse with Steadman?

A. No, sir; I went to them.

Q. You wanted to trade horses?

A. Yes, sir; I asked him if they had any horses they wanted to trade, and he said they didn't have any ponies but more than one or two. He said, "You see my partner over yonder; he probably would trade with you."

Q. Did you see any fine horses?

A. Yes, sir; very fine horses.

Q. Worth two or three hundred dollars?

A. I don't know; I know they were fine horses.

Q. Stallions?

A. Well, I didn't examine them close enough.

Q. They were a fine herd of horses?

A. Yes, sir.

Q. About as fine as you ever saw in that country?

317 A. No, sir; we have some about as fine in that country as any other country.

Q. You pay lawyers with them. About as big as Newfoundland dogs. At any rate, this was a very fine herd?

A. I suppose so; I am not a judge of real fine blooded stock.

Q. You did not trade?

A. No, sir.

Q. Did they buy anything from you?

A. No, sir.
Q. Did you buy anything from them?
A. No, sir.

SUSAN HOPE.

Col. CRAVENS. Where do you live?
A. Fourth street, in town here.
Q. You keep boarding house?
A. Yes, sir.
Q. Do you know Caroline Bruner and Jim Bruner?
A. Yes, sir.
Q. Have they been stopping with you?
A. Yes, sir.
Q. If there was any trouble between them at your house, about their testimony, or a fuss there one night, tell what you heard Jim say to her?
A. He asked her if she went to the lawyer's room. She said yes, the lawyer wanted to see her, and she went in there, and he told her what did she tell; she told him; he asked her why did she tell it that way; what is the reason they all wouldn't swear together; both of them ought to swear the same thing; she said, no, she wanted to tell the truth, and he asked her how did she tell it, and she went on and told him. He said she is always running her tongue so much is the reason she was down here. He got mad with her.
Q. Tell if they had any trouble at any time?
A. Jim got Caroline, he punched her and jobbed her; at least she was crying in the room.
318 Q. Where were you at that time?
A. In my room in bed.
Q. Could you hear what was said between them?
A. Yes, sir; she said she couldn't help from being down here; she said it wasn't her fault she was down here; he said it was; if she kept her mouth shut she wouldn't be down; he said she going to break down his word, and she said something about some one sending her a letter.
Q. He was punching her?
A. Yes, sir.
Q. Did you interfere?
A. Yes, sir.
Q. What was she doing?
A. She was crying, and she got louder and louder, and I waited and waited, thinking they would both stop directly, and she got louder and louder; they got out in the hall, and she told him to let her go; finally he let her go, and the came out in the hall and commenced again; I told them to stop it; he ought to be ashamed of himself. She said: "Yes, I am glad you speak; he won't let me alone, punching me about coming down here to Fort Smith." I told him to dry up. She said she was afraid to go in her room. I told her to go in her room, and if he bothered her any more I would call a policeman.
Q. When was that?
A. I forget; one day, I think, last week—one night.

Cross-examination:

Col. CLAYTON. Is Jim staying there with you yet?

A. Yes, sir.

Q. Are both of them there?

A. Yes, sir.

Q. Were they sleeping together?

A. Yes, sir.

Q. He was punching her?

A. Yes, sir.

319 Q. In bed?

A. At least she told me that.

Q. Are you a married woman?

A. Yes, sir. I asked her what he was doing to her.

Col. CRAVENS. What did she say that night?

Col. CLAYTON. Never mind. He was punching her right there in bed?

A. That is what she told me, and she was crying.

Q. Was Jim jealous of her?

A. I don't know, sir.

Q. Was she running around with some other men?

A. No, sir.

Q. Is your husband at home?

A. No, sir.

Q. Where is he?

A. He is in Texas.

Q. How long has he been there?

A. About five months.

Q. Left you?

A. No, sir; he is in jail there?

Q. What is he charged with?

A. Murder.

Q. How long have you been keeping boarding-house?

A. About five or six months; ever since my husband was arrested and taken to Texas for murder.

Q. Since your husband has been charged with murder you fel/ like helping other people charged with murder?

A. Yes, sir.

Q. Kind of a fellow-feeling?

A. Yes, sir.

Q. So you thought you would tell Col. Cravens about this matter. How did they find out about it?

A. She told me to go and tell it for her that he was abusing her.

Q. Who did you go and tell?

A. Mr. Cravens.

Q. You thought that would help the man out of the same fix your husband was in?

A. No, sir; I don't know anything about it.

Q. Do you know what he punched her with?

A. No, sir; I just got up and told them to stop fussing?

320 Q. Was it with his feet or hands?

A. I didn't see them.

Q. How long had they been there before this punching commenced?

A. She had been there longer than he had; she run off and come to my house to board.

Q. How long had she been there before Jim came?

A. I reckon about four or five days.

Q. What is the man's name who brought her to your house?

A. I don't know; nobody brought her there.

Q. How did she find your place?

A. I don't know, sir; I was in the kitchen when she come, and there was nobody there but her.

Q. Who else are boarding there?

A. I have got another gentleman staying there; he is a deaf and dumb fellow.

Q. What is his name?

A. George Keith.

Q. He is the only boarder you have now?

A. Yes, sir; except this man and woman.

Q. He told her she shot her mouth off too much?

A. Yes, sir.

Q. You say she told him what she had told these lawyers. What did she say she told them?

A. I don't know.

Q. Did she tell him she told these lawyers they didn't have any guns when they went off that morning—that the defendant didn't have a gun?

A. I don't remember what she said.

Q. How long had Jim been there; he just came the day she told him that?

A. No, sir.

Q. How long had they been there boarding with you?

A. He has been there a week; she two weeks.

Q. When did this occur?

A. One day last week.

321 Q. Then it must have been about the time he came?

A. Yes, sir.

Q. Wasn't it the very day he came there. You say she run off from home, and staid a week with you before he found her?

A. It wasn't the very day he came there.

Q. She run off and left home and came to your house?

A. I don't know whether she run off and left home or not.

Q. You know she came there and staid a week. What was she doing during that week?

A. I don't know—she was going to the courthouse.

Q. Was any gentlemen calling to see her?

A. No, sir.

Q. I suppose you have gentlemen come and see you?

A. No, sir.

Col. CRAVENS. Does your daughter live with you?

A. Yes, sir.

Q. You have some children besides this daughter?

A. Yes, sir.

Q. He was complaining about what she told the lawyers?

A. Yes, sir.

Q. She told you she was crying from the punching and treatment he gave her?

A. Yes, sir.

(Adjourned till 1.30 p. m.)

322 JUNE 19TH, 1890—1.55 p. m.

WILLIAM TURNER.

Col. BARNES. What is your name?

A. John William Turner.

Q. Where do you live, Mr. Turner?

A. About 18 miles south of Muskogee.

Q. Did you buy any horses last fall—do you know Alexander?

A. I have seed him; bought a couple of mares from him and Steadman.

Q. When?

A. In October sometime.

Q. Where?

A. At Muskogee.

Q. How many horses did they have at that time?

A. I don't know; they had a right smart bunch.

Q. They had a bunch of horses there?

A. Yes, sir.

Q. Whose horses did they appear to be?

A. I don't know; I wasn't up there; Mr. Shaw, the section foreman, sent word down to me that there was a bunch of horses south of town, and for me to come up and perhaps I could buy a team, and I went down and got him to do the trading for me, as I was hard of hearing, and I wasn't very well at the time.

Q. You bought the horses from this man and Steadman?

A. Yes, sir.

Q. Were they branded?

A. Sir?

Q. Are they branded?

A. Yes, sir.

Q. What is the brand?

A. One of them branded on the left fore-leg with C. T. & E. formed together.

323 Q. How was the other branded?

A. Half circle six.

Q. "C" above and the T. & E. formed together, and then the other one was branded half circle six?

A. I am not certain; almost invisible; couldn't get any more than the six.

Q. What did you pay for the horses?

A. One hundred and ten dollars for the two.

Q. One hundred and ten dollars; fifty-five dollars apiece?

A. Yes, sir.

Q. You bought them at Muskogee?

A. Yes, sir.

Q. Did they have them in a bunch? At the time you bought these did they have these mares in a bunch of horses?

A. Yes, sir.

Q. Where did you separate them from the bunch?

A. In the stock yards.

Q. Railroad stock yards?

A. Yes, sir.

Q. Who separated them; who did you trade with?

A. Both of the men was in there.

Q. Traded with both of them?

A. Yes, sir.

Q. Both talked to you about the trade?

A. Yes, sir.

Q. Both of them was there, and both appeared interested in the trade?

A. Yes, sir.

Q. Did you get a bill of sale?

A. Yes, sir.

Q. Where is it?

A. It is in Little Rock.

Q. How came it in Little Rock?

A. Well, when I bought the mares Mr. Shaw went down to the mill to get a bill of sale for the mares, and when he brought it back I took my mares and put the bill of sale in my pocket, and when I went to my mother's house I put the bill of sale in a trunk with some money
324 I had, and when I went to take the money out I just left the bill of sale in there, and when she went off she took it with her.

Q. Did you ever make an effort to get it?

A. I wrote to her Monday morning.

Q. To Little Rock to send it her?

A. Yes, sir.

Q. You were not present when this bill of sale was made?

A. Mr. Shaw went down to the mill when it was made.

Q. You traded out there at the stock yards?

A. Yes, sir; and there was no chance to write a bill of sale there.

Q. How about the trade?

A. When I went down to where the horses were I seen Mr. Shaw and talked to him about the trade, and told him that I was hard of hearing and wasn't feeling very well, and so we went down and looked at the horses, and I inquired of both of the men about their ages and price and whether they was broke to ride. Mr. Shaw done most of the trading for me. When we took them up to the stock yards he said he would catch them and I could have a better view of them, and we took them up there and both of the men assisted in catching the horses, and we wanted to know whether they was broke to ride, and they said they would ride both of them, and went and got saddles, and, as well as I can remember, Steadman rode one, and Alexander's girth wasn't long enough to reach around, and he said if we would get a longer girth he would ride it, and we said, "Never mind."

325 The COURT. Mr. Cravens, Dr. Bailey is here, and as he is busy all the time, just let the witness step aside.

(Witness excused for examination of Dr. Bailey.)

W. W. BAILEY, M. D.—(Witness for the Government.)

Col. CLAYTON. What is your name?

A. W. W. Bailey.

Q. What is your profession?

A. Physician and surgeon.

Q. How long have you been a surgeon?

A. Well, I have been in the practice of medicine since 1861, when I went in the Army.

Q. You are a graduate?

A. Yes, sir.

Q. You have had some experience in surgery?

A. I suppose about as much as any person in this country.

Q. Is that a piece of skull you have taken out of that box? I see you have cleaned them?

A. Yes, sir; I have washed them off so I could see them and where they were held in place. He was shot in the right side. [Takes pieces of skull and places them together, and also compares them with skull that is intact, and locates piece of skull that contains bullet hole. Also showing the different sutures, and the frontal, parietal, and temple bones.] The frontal bone is the front part of the head; these two pieces are portions of the frontal bones; this piece contains part of the orb of the eye, so that he was shot in the right side, in the posterior portion of the head—that is, the hole is there.

The COURT. What is the hole?

A. I should say it was about a 32.

326 Q. What is it made by?

A. By a bullet.

Cross-examination:

Col. BARNES. You don't know, as a matter of fact, what that hole is made by, or whether it is a bullet or not?

A. I am pretty certain; it seems to have been a bullet?

Q. You just go by appearances?

A. Yes, sir.

Q. That would be about in a line with the ear, where you pointed out there.

A. Just a little posterior to the ear—in the interior portion of the ear.

Q. As to the size of the hole, did you take any notice as to that?

A. No, sir, I don't know really. I am not much of an expert, but I should suppose it to*n* be about a 32.

Q. How many parts of the skull did you have before you?

A. Just these two pieces. I don't think all of them are here. The skull has been crushed.

Q. You didn't attempt to put them together, except these two pieces. You went far enough to determine where the location was?

A. Yes, sir; there is a part—a great deal of it gone.

Q. You examined all the pieces that were before you, but those are the pieces you examined most carefully?

A. Yes, sir; I examined them and located it?

Q. You say part of it is gone?

A. Yes, sir; there is a great deal of it gone.

Q. It has been crushed—the skull has been crushed?

A. Mashed or crushed, I suppose, from the nature of it.

327 Col. CLAYTON: It would take considerable force to crush a bone in that way. Would it be possible for the hogs to take the skull of a mature man and crush it in that way?

A. No, sir; I don't think they could; I don't know positively, but I doubt it very much.

The COURT. Are you familiar with gunshots—have you seen a great many of them?

A. Yes, sir; I think so. I was in the Army five years, and I didn't do hardly anything else except treat soldiers, and I have been on several battlefields?

Col. BARNES: You speak about hogs not being able to crush the skull. If the skull was green it would be much easier to crush and softer than it is now?

A. It would be softer, but it is held firmly by the tissues and muscles.

Q. Don't you know as a matter of fact that a large drove of hogs could easily crush an ordinary bone? Have you ever seen hogs crush an ordinary bone?

A. Yes, sir.

Q. Don't you think if 50 hogs were in there they could crush the skull?

A. No, sir; I don't think they could hardly crush a man's skull.

Q. You think not?

A. I think not; I would not say positively, but I do not think they could.

Q. Did you ever see a hog crush a beef bone?

A. No, sir; not a very large one?

Q. Well, doctor, we will take the expert business on the balance, but I am not willing to accept that.

328 A. The skull is the strongest bone in a man's body.

The COURT. It is constructed that way by nature?

A. Yes, sir.

Q. Supposing it were flat or square?

A. It would be——

The COURT. I will ask you if that is not one of the reasons given by anatomy for the shape of the skull?

A. Yes, sir; there are certain parts of the skull that are not so thick; you take the side of it, and it is a little thin through the temple.

Col. BARNES. Now, for instance, take a case like this: Suppose a man's remains lay out there for ten days, or suppose even a week, and a drove of hogs were around working at the remains, wouldn't there be parts of the skull that they could crush, and then they could crush the whole skull?

A. If you will allow me to answer that question by telling something I have seen during the war—I have seen the hogs working on mules, and I have seen them go in from the rear and eat everything out and leave the frame there; I don't know that I ever seen them crush any bone, and I don't think a hog could crush the bone. If you want my opinion about it, I don't think the hogs could possibly do it.

Q. Do you think it could be done after the skull was partly broken?

A. Yes, sir; it might be done then.

WILLIAM TURNER—Recalled by defense.

Col. BARNES. Just commence where we stopped and go on and
329 tell us all about this matter. I was trying to get you to tell about the trade.

A. We went down to look at the mares, and asked the price of them, and they said they would drive them up to the stock yards, and we would catch them, and we drove them up there, and both of them caught the mares, and Mr. Steadman fastened a saddle on one mare and rode her, and Alexander fastened a saddle on the other mare, and the girths wouldn't meet, so he said if we would get a longer girth he would ride her, and I said: "Never mind; just let her alone." Alexander and Steadman and myself was standin' in the corner, and Shaw was standin' on a piece, and he says to me not to pay the money until I got a bill of sale, and I told him I would pay him the money, and just as I went to get the money one of the horses jerked back to get loose, and I said I would take the mares, and I handed him the money, and then they went down to the mill.

Q. What did they go to the mill for?

A. To draw up a bill of sale.

Q. Who went with Shaw to the mill?

A. Alexander and Steadman.

Q. They both went down there, as you understood, for the purpose of signing a bill of sale?

A. Yes, sir. Shaw come back, and he gave me the bill of sale.

Q. Where did you put the bill of sale?

A. In my pocket.

Q. Which pocket?

A. In my vest pocket, and after I went home I took it out of my pocket, and I was in a hurry, and I took the bill of sale out and put it in a trunk.

Q. You left it there?

330 A. I was sick, and I didn't pay any attention to it. I was hard of hearing, and I didn't pay much attention; I had a catarrh in my head.

Q. You never looked to see whether they both signed the bill of sale or not?

A. No, sir.

Q. You understood they both owned the horses, and they both signed the bill of sale?

A. Yes, sir.

Q. And you wrote to your mother, but haven't received it yet?

A. Yes, sir.

Q. They both went to the mill?

A. Yes, sir; that is all I know about it, as I was sick and I never paid much attention to it.

Cross-examination:

Col. CLAYTON: Turner, how long have you been here?

A. I came here Monday morning.

Q. Now, have you heard from your folks after you wrote to them for that bill of sale?

A. No, sir.

Q. Have you telegraphed for it?

A. No, sir; I wasn't able to telegraph.

Q. Didn't Mr. Steadman tell you to telegraph for it at his expense?

A. I didn't understand him to say it; I was hard of hearing, and I didn't understand him to say he would pay my expenses for it.

Q. He told you to telegraph for it?

A. Yes, sir.

Q. I will ask you if that bill of sale didn't have Steadman's name on it, and his name only?

A. I don't know that; I can't swear to that; I never saw the
331 name on it, because I didn't open it.

Q. You are a good business man. I will ask you if Alexander had a single thing to do with that trade; if he had a single word to say about that trade?

A. They was both around together.

Q. Did he say a word about that trade?

A. I just told you Shaw done the trading.

Q. You were there?

A. Yes, sir.

Q. And it was your money to pay for it?

A. Yes, sir.

Q. I will ask you if you didn't tell this gentleman here (Mr. Steadman) that Steadman did all the trading, and that Alexander didn't say anything?

A. I said Alexander got on his horse once or twice, and drove them around in the bunch.

Q. Didn't you say he didn't have anything to do with it?

A. I told him I talked to Alexander about the times, and that was all that was said about it.

Q. Yes, sir; you talked with Alexander, and the trade was made with Steadman.

A. I don't know which one Shaw traded with.

Q. Where is Shaw?

A. I don't know.

Q. Is he here?

A. No, sir.

Q. You don't know which one he traded with?

A. No, sir.

Q. You don't know whose horses they were?

A. No, sir; I don't know.

Q. Who are you winking at? (No answer.)

A. Did you hear me? Who are you winking at?

A. No one at all.

332 Q. Now, tell me, who you were winking at; you can't wink with one eye without my seeing you. You were winking over at Cravens, that man there. Who were you winking at?

A. I wasn't winkin' at no one.

Q. You were winking at Cravens.

Col. CRAVENS. He was just batting his eye.

Col. CLAYTON. Col. Cravens, don't deny it.

Col. CRAVENS. I don't know whether I would lie or not.

Col. CLAYTON. I dare you to. (To the witness.) You may stand aside sir.

Col. CRAVENS. I will ask you if I didn't ask you to telegraph for the bill of sale?

A. Yes, sir.

Q. And you told me you didn't have the money to telegraph, and I told you to borrow it?

A. Yes, sir.

Col. CLAYTON. We offered him the money, ourselves.

Col. CRAVENS. I don't believe it.

Q. You came here Monday morning?

A. Yes, sir.

Q. When were you subpœnaed?

A. Saturday.

Q. Have you seen Alexander since you bought the horses?

A. No, sir; the last time I seen them was when they left the stock-yards, and I never knew nothin' about it.

JOHN B. FLOYD.

Col. CRAVENS. What is your name?

A. John B. Floyd.

Q. Where do you live?

A. Muskogee.

Q. When did you come here?

A. Last Monday.

333 Q. When were you subpœnaed?

A. Last Saturday.

Q. Do you know Alexander?

A. I met him once at the stock yard, at Muskogee.

Q. When was it?

A. I think last October—last fall.

Q. Do you know anything about Turner buying a couple of mares from a couple of gentlemen up there?

A. Yes, sir; I was present when he bought the mares.

Q. Just tell all you know about it.

A. I don't know a great deal about it; I was employed at the stock yards.

Q. You were employed by the railroad at the stock yards?

A. Yes, sir; Alexander and Steadman came there with their horses, and they asked my permission to bring the mares in the lot until they could catch the mares they wanted to sell to Turner, and I gave them permission until they caught the mares. Alexander was the one that done the selling to Turner. Steadman was there and went off up town and got a new rope, and Alexander took it from him and caught the mares. I was talking to Steadman most of the time while Alexander was talking to Turner.

Q. Was Shaw there?

A. Yes, sir.

Q. Did he have anything to do with the trade?

A. Shaw had considerable to do with the trade.

Q. Who claimed to be the owners?

A. Well, from what I understand, I suppose they were both owned them; that was the way I understood it.

Q. Was there a bill of sale made?

A. Yes, sir; Steadman called Alexander his partner, and for
334 that reason I supposed they both owned them.

Q. He spoke of Alexander as being his partner?

A. Yes, sir; called him his partner.

Q. After the trade was made, do you know anything about them making a bill of sale?

A. No, sir; I don't.

Q. They went down to the mill to make the bill of sale?

A. Yes, sir; just above, on the north side of the stock yards; just a little ways from the stock yards.

Q. Who went there?

A. Shaw, Alexander, and Steadman.

Q. Went down there for the purpose of making a bill of sale?

A. Yes, sir.

Q. Did Turner stay there all the time?

A. Turner helped put the mares in another pen.

Q. Did you see the bill of sale, yourself?

A. No; I never seen the bill of sale.

Q. Steadman said that this man was his partner?

A. Yes, sir.

Q. And the large part of the trading was done between Turner and Alexander?

A. Yes, sir.

Q. And part of the time they were still there talking, and Steadman was gone up to town to get a rope?

A. Yes, sir; Steadman went out and got a rope to catch them with.

Cross-examination:

Col. CLAYTON. Alexander called him his partner?

A. Yes, sir.

Q. How did he do it?

A. Well, they claimed that the horses had both been broke to ride, and after they had been caught I noticed they was a little bit skittish, and I said to Turner—they was all talking about the mares, and I judge
335 from appearances that one of them was about 10 years old—and I told him if she had never been broke it would be a hard matter to ride her, and he says to Alexander that is my partner, and he will rode them.

Q. He didn't tell you he was his partner, but said his partner would ride the horses?

A. Yes, sir.

Q. What made you talk to Steadman?

A. Because he happened to be the man that was by me.

Q. Who did Alexander talk the most to, Turner or Shaw?

A. I don't know.

Q. Talked to both of them?

A. Yes, sir.

Q. Good deal?
A. Yes, sir; considerable.
Q. Well, you talked to Steadman?
A. Yes, sir.
Q. Is that the only time he spoke of him as his partner?
A. Well, I wouldn't like to say whether it was or not.
Q. What kind of a looking man was Steadman?
A. He was a tallish man, with blue eyes.
Q. Blue eyes and light hair?
A. Yes, sir.
Q. Tall or small?
A. I think he was a little bit taller than I am.
Q. How was he dressed?
A. He had on a white hat; I don't remember his clothes; they seemed to be kind of sun-faded; they wasn't new; seemed to be just as a common, ordinary man would dress.
Q. Was his mustache sandy?
A. I don't think it was red.
Q. Sandy?
A. It was a light color.
Q. Hair light?
A. I think it was; he had his hat on.
Q. Blue eyes?
A. I think so.
336 Col. CRAVENS. He had a kind of a light mustache?
A. Yes, sir.
Q. Had his hat on?
A. Yes, sir; I didn't pay much attention to the color of his hair.
Q. You didn't take any particular description of the man.
A. No, sir.

CHARLES J. PHENIS.

Col. CRAVENS. What is your first name?
A. Charles J.
Q. Where do you live, Mr. Phenis?
A. At Muskogee.
Q. Do you know Steadman and Alexander?
A. I think it is the man here, and his partner; I saw them.
Q. Where did you live at the time you saw them. Speak out so the jury can hear you?
A. I lived at Muskogee at the time.
Q. Where did you see them?
A. At Choska.
Q. What were you doing at Muskogee?
A. I was working.
Q. You staid there at the time?
A. Yes, sir; at work.
Q. Do you know the time Steadman is said to have disappeared?
A. Yes, sir.
Q. What day was that?

A. I don't know the day of the month; it was on Monday, I think it was.

Q. I don't care about the day of the month.

A. It was on Monday.

Q. Did you see Steadman the day before?

A. I did.

Q. Where?

A. He was there at Lipscomb's store.

Q. Do you know Mrs. House?

A. Yes, sir.

337 Q. By sight?

A. Yes, sir.

Q. Mrs. Sam House?

A. Yes, sir.

Q. Did you see them have any conversation or see them together that day at any time?

A. They wasn't right together; he was out in front of the house, and she was up stairs, settin' there a talkin'.

Q. When?

A. Sunday, in the afternoon.

Q. She was up stairs, at the window?

A. Yes, sir.

Q. And he was outside on the ground?

A. Yes, sir.

Q. How long were they conversing there?

A. I couldn't tell you exactly; it must have been some half an hour, though.

Q. Where were you at that time?

A. I and another fellow was settin' off some 30 steps from them on a log.

Q. Could you hear what they said?

A. No, sir.

Q. Did you see them holding a conversation there, and talking, for some time?

A. Yes, sir.

Q. Something like half an hour, and it was on Sunday afternoon?

A. Yes, sir.

Q. What time was it in the afternoon?

A. It was right after dinner; I expect it was one or two o'clock.

Q. It was soon after dinner?

A. Yes, sir.

Q. Did you ever see Steadman after that?

A. No, sir; I never did.

Q. Did you see Mrs. House after that?

A. Yes, sir; I saw Mrs. House late that night or evening.

Q. Did you see her after that evening?

A. No, sir; not until I saw her here yesterday.

Q. How many times had you seen Steadman before that?

338 A. I could not tell; I think I had only seen him once before that.

Q. Were he and Alexander together when you saw them before?

A. No; I don't think they was.
Q. Where did you see him?
A. He came there at the store.
Q. You learned who it was when you saw him there?
A. Yes, sir.
Q. Did you have any conversation with him yourself at any time?
A. No, sir, I never did.
Q. You just knew it was Steadman by sight?
A. Yes, sir.
Q. You had heard who it was?
A. Yes, sir.
Q. You hadn't been introduced to him?
A. No, sir.
Q. You saw him down there, and learned it was Steadman?
A. Yes, sir.
Q. Do you know whether Mrs. House had any children there at that time?
A. Yes, sir; they had one child running about that day.
Q. Was Steadman afoot or on horseback?
A. He was there on horseback, standing on the ground, leaning on his horse.
Q. Talking up to the woman?
A. Yes, sir.
Q. What kind of a horse was it?
A. To the best of my recollection it was kind of a brown pony; brown-colored pony.
Q. Dark-colored pony?
A. Yes, sir.
Q. Do you remember anything about the child being on the pony?
A. Yes, sir; there was a child; he put a small child on the pony, and led it up to the house where we was boarding.
Q. Whose child was it?
A. I won't be certain, but I think it was Gus Houses's child.
Q. Where were you—at what house?
3339 A. I was boarding at Gus Houses'.
Q. Where is Gus House's house from the store?
A. Well, it is 30 or 40, or 40 or 50 yards northwest from the store.
Q. That is the only residence about the store?
A. Yes, sir.

Cross-examination:

Col. CLAYTON. What is your name?
A. Charles J. Phenis.
Col. CRAVENS. How do you spell it?
A. P-h-e-n-i-s.
Col. CLAYTON. Mr. Phenis, that was Sunday, was it?
A. Yes, sir; it was Sunday.
Q. What were those people saying?
A. I couldn't hear what they were saying.
Q. How do you know they were talking?
A. I could see them talking.

Q. From the words?
A. No, sir; I could not hear the words.
Q. How do you know they were talking?
A. Well, it looked like they was talking.
Q. Did you ever see a man look at a woman without he was talking to her?
A. Yes, sir; I have.
Q. They looked like they were talking, and that is the reason you swear they were talking?
(No answer.)
Q. Now, wasn't that child that he had on the horse this woman's child; wasn't it Mrs. House's child?
A. I said I wouldn't be certain; I think it was Gus House's child.
Q. Was that he' child?
A. I don't know.
Q. Was there any other women there?
A. Yes, sir.
Q. What was her name?
A. I don't know.
Q. Did you hear a woman speak to that woman, and tell her
340 not to let her child get on that horses? There was a woman there?
A. Yes, sir.
Q. You don't know her name?
A. No, sir.
Q. What were you doing there; watching her?
A. I wasn't watching her.
Q. Did you talk to her?
A. No, sir.
Q. Wasn't that woman's name Ann Fletcher?
A. It might be; I don't know.
Q. Was it?
A. I don't know.
Q. You don't know anybody but the man and the woman. Wasn't that woman's name Ann Fletcher?
A. I wasn't acquainted with her.
Q. Have you got acquainted with Ann since?
A. No, sir.
Q. Did anybody tell you she was? You know whether it was Ann Fletcher or not, and let's have it?
Col. CRAVENS. Ann Fletcher, where?
Col. CLAYTON. He said she was there, and I want to know; the woman testified that she was there, and she spoke to Ann Fletcher, and told her not to let her child get on that horse, and I asked him if this woman there wasn't Mrs. Fletcher. Now, Mr. Phenis, you had ought to be able to tell me whether that was Ann Fletcher?
A. Women is plenty ful around there.
Q. There was no other one in the house?
A. I know this much, they called her Ann.
Q. Well, we have got the first end of her name; they called her Ann. Steadman was out there and put the child on the horse; was
341 Steadman talking to her?

A. I don't know whether he was or not.
Q. He was there on the horse Sunday afternoon?
A. He wasn't on the horse.
Q. He came with the horse?
A. Yes, sir.
Q. What became of the child?
A. It come in the house, I think.
Q. That is the nearest you ever saw him to the woman?
A. Yes, sir.
Q. That is the nearest you or anybody else ever saw him to that woman?
A. I reckon.
Q. Was that as near as you ever got to that woman?
A. No, sir.
Q. You have been nearer than that?
A. Yes, sir.
Q. Were you watching this man to see if he would cut you out?
A. No, sir.
Q. How near have you ever been to her?
A. I set in the wagon with her when I hauled her up there.
Q. Was you ever nearer than that?
A. Yes, sir; I helped her out of the wagon.
Q. That is the nearest you ever got to her?
A. Yes, sir.
Q. Then you were not jealous of this man, to see that he didn't get away with your girl?
A. No, sir.
Q. She lived up stairs?
A. Yes, sir.
Q. That was her home?
A. Yes, sir.
Q. Did you ever talk to a lady through a window?
A. No, sir; I never did.
Q. Did you ever see her talk to anybody else?
A. Not through that window; I believe she was talking with
342 some of the boys through one at the side, when we was building the house.
Q. She was a married woman, and had her children running around there?
A. Yes, sir.

GUS ORCUTT.

Col. CRAVENS. What is you name?
A. Gus Orcutt.
Q. Do you know J. L. Johnson?
A. Yes, sir.
Q. Did you come down here or start down here with him, when you came before the grand jury in February last?
A. I believe he came along, yes, sir.
Q. I will ask you if you remember coming across Wild Horse prairie, up there with him, and stating to him that there was enough of us coming down—speaking of Alexander—to hang the damned son-of-a-bitch?

A. How was that?

Q. That you stated to Johnson up there on Wild Horse prairie that there was enough of you, or you were bringing enough down here to hang the damned son-of-a-bitch.

A. I don't know.

Q. I will ask you if you didn't offer to bet down here in a store—I have the day here—on the 13th of June—if you didn't offer to bet that Alexander would be hung?

A. No, sir; I didn't do that.

Q. You deny that?

A. Yes, sir.

Cross-examination:

Col. CLAYTON. This Johnson came down here as a Government witness?

A. Yes, sir.

343 Col. CRAVENS. I will ask you if you had a conversation with Alexander—you were present when he was arrested—I will ask you if you didn't, after he was arrested, have a conversstion with him and tell him there at the store, at Lipscomb's store, if you didn't tell him that you wanted him to understand that you didn't have anything to do with it, and that you knew nothing against him at all and that the note which you had carried from the store—started at the store—the note which you carried over to Muskogee started at the store?

A. No, sir; I didn't have any such conversation; I told Mr. Alexander, I expect it was after he was arrested—I and him talked about that——

Q. I will ask you if you didn't tell him that you knew nothing against him; that you wanted him to understand that the note which you carried from Muskogee all started at the store?

A. No, sir.

Q. You know Lipscomb?

A. Yes, sir.

Q. He is a brother-in-law of Sam House; brother to Mrs. House?

A. Yes, sir.

Q. You had no conversation with him?

A. No, sir.

Cross-examination:

Col. CLAYTON. What conversation did you have? You started to tell what conversation you had with Alexander, and Col. Cravens cut you off.

A. We was going along there and he said something about letters being against him, and I told him I didn't know anything that was in that at all.

344 Q. What note was this you took?

A. It was a letter from my father to the agent.

Q. Do you know what it was about?

A. I know it was about the case; I don't know; I never read it.

Q. Your father sent a note by you to the agent?

A. Yes, sir.

Q. This man Johnson; that is, long-haired Johnson?

A. Yes, sir.

Q. Lets his hair grow long; that is one of the Government witnesses that has been taking a good deal of interest against us; when we were

looking over our case together, do you know of his running off and going to the gentlemen on the other side?

A. I don't know much about that.

Q. Well, I do.

Col. CRAVENS. He showed good taste; that is what any decent man would do.

J. L. JOHNSON—Recalled.

Col. CRAVENS. Your names is J. L. Johnson?

A. Yes, sir.

Q. You were examined here before?

A. Yes, sir.

Q. Do you know Gus Oreutt?

A. Yes, sir.

Q. When you came down last February, or started down last February, from the Choska neighborhood to this place was Gus Oreutt with you?

A. Yes, sir.

Q. Did you have any conversation with him on the road about enough of you coming down here to hang the d'mned son of a bitch?

Q. The conversation wasn't with me or to me any more than the balance of us; he just made that remark, that there was enough of us
345 would come down to hang the damned son of a bitch.

Q. I will ask you if since that you have had a conversation with him in which he offered to bet the same thing?

A. Yes, sir; some time ago some of the witnesses was down here in a store, and we all started out to the door, and he said he would bet they would hang the son of a bitch, and I asked him who, and he said Alexander.

Cross-examination:

Col. CLAYTON. Did you take the bet?

A. No, sir; I didn't.

Q. You are the man they call Long-haired Johnson?

A. Yes, sir.

Q. You are a white man?

A. Yes, sir.

Q. Kind of a white-washed Indian?

A. No, sir.

Q. What is your object in wearing your hair long?

A. Just for curiosity.

Q. Because the "Injuns" wear long hair?

A. No, sir.

Q. You are a white man?

A. Yes, sir; I reckon so.

Q. Were you in my office the other day when the Government witnesses were there and I was trying to ascertain the facts in the case, and did you leave my office?

A. Yes, sir.

Q. Where did you go?

A. I went to a saloon.

Q. I will ask you if you didn't go to Mr. Reed's office; I will ask you

if you didn't inform Mr. Reed what transpired in my office? When did you tell them about the things you have testified to?

A. The other day. I have been in their office several times. My boy was carried over to Muskogee, and they had Jim in jail, and I wanted to see if I could get damages.

346 Q. Is that all the business you had?

A. Yes, sir.

Q. You never went there to talk to them about this case?

A. I never did.

Q. You did talk to him?

A. Yes, sir.

Q. When did you tell them about what you have testified to to-day?

A. I never did.

Q. You say this man said there was enough of you coming down here to hang the son of a bitch?

A. We was all talking about it, and he said he was guilty, and he said there was enough of us coming down here to hang the son of a bitch.

Q. Who else was present?

A. Seven or eight men in the wagon.

Q. Who were they?

A. Martin and Hogan and Stephens and Gus Orcutt and me and James, and I believe that was all.

Q. All coming down in the wagon?

A. Yes, sir.

WILLIAM ALEXANDER.—Defendant.

Col. CRAVENS. What is your name?

A. William H. Alexander.

Q. You were arrested near Muskogee?

A. Yes, sir; I think about five miles on the way between Muskogee and the camp, where I overtook them.

Q. How long had you been in that part of the country at the time you were arrested?

A. Let me see; I think about a month; may be longer.

Q. Where did you come from to that place?

A. Arizona.

347 Q. What part of Arizona?

A. Yavapai County, near Prescott.

Q. Raised there?

A. No, sir; I have been there since '70.

Q. Where were you born?

A. In Kansas.

Q. Where were you raised?

A. I was partly raised in Kansas and in Texas, and I came to Arizona.

Q. Who did you go to Texas with?

A. I went with some cattle men.

Q. How long did you stay with the cattle men?

A. Only just the trip into Texas; I found what employment I could get, and I went with an officer in the 6th Cavalry by the name of Bothwick.

Q. How long did you work for him?

A. Until along in '75, when I went to Kansas and went to work for another cavalry officer, and I came into Arizona and worked for another officer in Arizona until I went to mining.

Q. Where did you meet this 6th Cavalry?

A. From Richardson, Texas.

Q. Did it move to Kansas?

A. Yes, sir.

Q. You went with the 6th Cavalry to Kansas?

A. Yes, sir.

Q. And went with it from Kansas to Arizona?

A. Yes, sir.

Q. And staid with this command in Arizona until you went to mining?

A. Yes, sir; after they left there I was in the mining business; I have been in the mining business for the last ten years; most of the work has been mining and prospecting for myself; this last winter a year ago I worked on a mine near Prescott.

Q. How did you get these horses that you had?

348 A. Well, sir, part of them I raised and the balance were raised in Yavapai County, Arizona Territory.

Q. How long did you live in that portion of the country, in that county?

A. We came to Arizona in '75, and in '76 I was mining in the southern portion; we was mining at Tuscon; I think we staid there one year; I staid there all through '76 and went from there up into Yavapai County; I wasn't right in Yavapai County all the time; I was living near Prescott; about 35 miles from there.

Q. You know David Steadman, of course?

A. The first time I saw Steadman him and his brother was working together; they were digging a well on the place where they were living; a place where there was no water, and they had to sink a deep well; the two had taken up a claim there and were sinking a well, and I understood it belonged to them together, and from that time I have seen them off and on; I have known them ever since, up to the present time; that, I think, was in 1879.

Q. In 1879 you met Steadman?

A. Yes, sir; I think it was.

Q. When did you next see David Steadman after that; have you been with him much since that time?

A. Oh, yes, sir; I have been with him a good deal; he lived close to where I lived there in Arizona.

Q. Did his brother live there?

A. His brother was there; sometimes his home was there; he was only there a short time that I know of.

Q. Now, how many horses did you have?

349 A. Well, sir, we started with 51 head; Steadman had 12 head out of the 51 when we first got together; there was a man came in there from Kentucky that raised fast horses and we sold out mining claim to him for $3,750 and then we bought the horses.

Q. Did you have a stock brand of your own?

A. An individual brand, sir.

Q. What was your brand?

A. Figure 6, half circle.

Q. How is that brand made?

A. (Witness shows.) It is on record in Yavapai County, Arizona Territory.

Q. It is a half circle to the right of the figure six?

A. Yes, sir.

Q. Figure six to the left of a half circle?

A. Do you wish to have Steadman's individual brand? It will be found on one of the horses in the herd. It is "4. S." Mr. Steadman knows whether it is or not; I don't know whether it is recorded or not.

Q. What were the brands on these horses?

A. I will give you all the brands here. There was the quarter circle four, William Allen's brand.

Q. How many horses of that kind?

A. Six head of that brand.

Q. "4. S." was Steadman's brand?

A. Yes, sir; and mine was the figure six, half circle.

Q. How many of them were there?

A. I don't know how many; there was 46 in the bunch, and there was only ten outside of the figure 6; also David Steadman had three head of this brand that he got from Earnest Steadman before he left.

Q. Earnest Steadman was Steadman's nephew?

A. Yes, sir; "O. S." is Earnest Steadman's brand.

350 Q. And the William Allen is the four quarter circle; the David Steadman brand is "4. S." and the "O. S." is the Earnest Steadman brand. Do you know how many horses there were of the William Allen brand?

A. Six.

Q. How many were there of the Earnest Steadman brand?

A. Three; there was four head with the one I bought myself.

Q. You bought one from Earnest Steadman?

A. I traded two for one, and got the little bald-faced one my partner rode.

Q. There was four of the Earnest Steadman brand?

A. Yes, sir; I disremember whether he had the stallion branded or not; if he did, that would make five of that brand; there was a stallion that he had before we went into partnership; that was the only horse he had branded "O. S." and then he had three horses from his nephew and that made four, that was the "O. S." brand; then he got six from William Allen, branded with the quarter circle four, and then he traded a wagon for two head of some man on the ——— Mountain—a Norman man traded two horses for a wagon, and they was branded, one of them—a mare was branded on the jaw with a small "o. s." and the other one was a sorrel horse, and that was branded on the left side with a circle S—a complete circle, with the S inside of it.

Q. That was a sorrel horse?

A. Yes, sir.

Q. That was a mare; what color was she?

A. A roan mare, and the other one was a sorrel horse, with a Roman nose.

351 Q. There was six of the William Allen brand, and three of the Earnest Steadman brand, that would be nine, and one that he had himself when he started and two that he traded a wagon for, and all the rest were yours, branded with half circle six?

A. Yes, sir.

Q. He had six of them and the stallion, and the two he traded from a Morman would be nine, and three of the Earnest Steadman brand would be twelve?

A. Yes, sir; and then I traded two for one, on account of not being able to find shelter.

Q. How many did you have together?

A. 51.

Q. 12 from 51 would be what you had?

A. There was one that got his leg broke at Trinidad, I think, and we gave it to one of the brakesmen, and he took it and gave it to his sister; he said it was a colt, and it would grow out of it.

Q. 12 belonged to Steadman and the balance to you?

A. Yes, sir.

Q. Two from eleven is nine; that would be 39 of your own?

A. Yes, sir.

Q. And all of them were branded with the half circle six?

A. All except one.

Q. That would be 38 branded with the half circle six?

A. Yes, sir.

Q. How many did you get from Earnest Steadman?

A. One—a little bay horse.

Q. And then you traded two for one?

A. Yes, sir; I wanted a saddle horse and I traded two for one.

Q. How were these horses owned?

A. They were owned between us—together—on conditions.

Q. Tell me the first trade you made?

352 A. It was this way; I had partially made arrangements to take my horses on a lease, and I went to Steadman and borrowed $150.00, and I was about to take my horses with me, and I met Mr. Allen, and he persuaded me out of the notion, and into the notion of going into Kansas and to Oklahoma, and I told Dave of our trade, and he wanted me to sell him a half interest in the horses, and I says, "Dave, as you have accommodated me and let me have money, I will let you have a half interest in the horses for $600.00 in cash," and he said he would let that $150.00 go, and he would give me $550.00 and pay all expenses of taking the horses. We drove then until we got to a place called Flagstaff, and after we got there we laid there a few days, and we concluded it would be best to ship the horses.

Q. Now, you had sold him a half interest in the horses for——

A. For $550.00, and he was to ship them.

Q. Except the mare, and that you reserved?

A. Yes, sir.

Q. Was there any payment made?

A. I received $350.00. He paid me $150.00—the amount which he loaned me before we went into partnership—and then he paid me $200.00 in the Creek Nation, altogether $350.00.

Q. That was the payment that had been made; how much did he owe you on the horses?

A. $200.00.

Q. Where did you leave Allen?

A. In Flagstaff, Arizona.

Q. Now, go on and tell it from there?

A. Well, we shipped our horses to a place called Oklakoma City, and we unloaded there, and went down on the river below Oklahoma
353 about 15 miles, and we staid there for some weeks, I don't know how long, and my partner says one day: "Alexander, our calculations in this country has went back on us." He says: "It is not like we calculated on," and he says, "don't you think you ought to give me something to show for my part?" and I says to him that he had always treated me well and been a friend to me, and I gave him a bill of sale for a half interest in the horses and trusted him to pay me the rest; he owed me $400.00 at that time, and he afterwards paid me the $200.00, and I agreed to pay my part of the expenses from that time on, and when we went into partnership he was to pay the expenses of the horses until they were sold.

Q. You staid how long around Oklahoma?

A. Some weeks; I don't know how long; I think about three weeks is my calculation, and maybe longer than that, and we went from there to Choska, and we had been there ten or eleven days before he disappeared.

Q. Choska, you mean?

A. Choska is where he disappeared, and we was there about ten or eleven days, if I mistake not; we would tend to our horses, and then we would go out hunting. We first went in the Cherokee Nation, to Choteau, I think and we staid there, and then we went to Muskogee.

Q. You and Steadman went with your horses?

A. Yes, sir; and my partner said they was opening up a new country down in the bottom and we could go down there, and one of us could tend to the horses, and the other could pay expenses or make expenses; we went back through Muskogee, and there was some section hands there,
354 and the foreman of the section hands came out and stopped us, and he said if we would run them up he would go and see his friend, and pretty soon he come up with his man, and we drove them up in the railroad stock yards, and he took his choice of two mares, and we sold them for $110.00 and we down *down* to the mill, and made a bill of sale, and both of us signed it in the flour mill.

Q. Signed by both of you?

A. Yes, sir.

Q. You signed it, and Steadman signed it?

A. Steadman signed it first, I think; we both signed it; Steadman drew it up himself; the bill of sale is in his own handwriting.

Q. The ones you sold to Turner were partnership mares?

A. Yes, sir.

Q. Did you acquire any interest in these 11 or 12 mares, that is, the horses of Mr. Steadman?

A. Yes, sir; this is the way it was. We got pretty hard run at that time, before the horses were sold, and I got tired of the horses, and I was willing to sell my horses for a great deal less than Steadman was, and I told

him if he would give me $300.00 we would call it square, and he didn't want to do it, and he says: "If you will keep the horses together, and agree to pay half of the expenses, I will make you a half owner in my horses, and I will pay you $200.00 if you will agree to pay your portion of the expenses," and I agreed to do it, and he paid me $200.00, making $350.00 in all.

Q. And you got a half interest in his horses. He said I had always used him right, and he was willing to do it; he said we had
355 come to that country together, and he didn't want us to split up, and he wanted to hold the horses together.

Q. This horse that you lost, whose horse was that?

A. We didn't lose any.

Q. You had one lost—one that got crippled; whose horse was that?

A. That was mine; he wasn't interested in it, because that was mine.

Q. It wasn't a partnership horse?

A. No, sir.

Q. How long did it take you to go from Oklahoma to Muskogee? You shipped the horses to Oklahoma?

A. Yes, sir, and we got a man to haul our things from there to, I think the name of the place in the Cherokee Nation was Choteau, about 35 or 40 miles from Muskogee, and we staid there several days, I don't know how many days, and then we moved from there to Muskogee.

Q. Who took the horses across the country from Oklahoma City?

A. I and Steadman.

Q. Did you travel alone or with anybody?

A. Well, sometimes we would be up with the wagon; the wagon would start out in the morning, and sometimes we would be with the wagon, and then at times we wouldn't be with the wagon only at night; the horses would get scattered and we wouldn't get in until night.

Q. What kind of country did you travel through from Oklahoma to Muskogee.

A. Well, sir, I think it was about half—more than half timber, and there was stretches of three or four miles where I didn't see a house.

Q. There was nobody with the horses but you and Steadman?

A. There was times when we would be up with the wagon, and there was times when we wouldn't be in sight of the wagon.

356 Q. After you made the trade at Muskogee, who was the money paid to?

A. To Steadman, and he paid me my proportion.

Q. And that was $110.00, and you got—how much?

A. $55.00.

Q. And you had gotten $200.00 from him?

A. I had got $350.00 from him.

Q. You had gotten $350.00, but you had gotten $200.00 of that lately?

A. I thought you meant that all that I had got from him. The $150.00 I got before we lest Arizona, and then the $200.00 in the Indian country; when we sold them two mares I got $\%\%.00.

Q. Where was it that it was agreed you should pay your part of the expenses?

A. At Muskogee.

Q. Before you wer t to Choska Bottom?

A. Yes, sir.

Q. Where did you go to when you went up there?

A. We drove into the bottom, next to the place where it is said Gentry owned the place, and we inquired for a place to stop where it would be handiest for the horses, and we found the handiest place for water would be there at Jim Bruner's; we concluded that would be the handiest for water, so we camped right there, and that was——

Q. Do you know what day you got there?

A. No, sir, I don't; when we first got there we went to Lipscomb's place, and it was the next day we went there; we started that evening, but we didn't get there until the next day.

Q. What day did you get to Jim Bruner's?

A. I don't know what day; I think it was Thursday or Friday.

357 Q. How long did you stay there before Steadman disappeared?

A. I think it was about 10 or 11 days; I would swear to it that it was something like that.

Q. You got there Thursday or Friday, and it was the next Monday, or the next Monday week that he disappeared?

A. It was Monday week after we got there that he disappeared.

Q. Where did you sleep when you first went there?

A. We slept out at the wagon.

Q. How long did you sleep out there?

A. I don't know just how many nights, and it come up a rain, and we asked permission from Bruner to move into his crib, and he gave us his permission to move into the crib, and we moved in there on account of the weather, and we slept in there until my partner disappeared, and I slept in there one night after he did disappear.

Q. After you went to the Bruner camp what did you do; how did you spend your time?

A. We spent the time looking after the horses, and riding around the country, and hunting, and going different places to see if we could rent a place, and we wanted to see if we could rent a stock field for our horses for the winter.

Q. And you would go off together?

A. Yes, sir; sometimes one would go ahead of the other; first one and then the other, fishing up and down the Arkansas River there together.

Q. What arms did you have, Alexander?

A. We had two shotguns the last time we was out.

358 Q. No, no; what weapons did you own?

A. Pistol and a shotgun; the pistol belonged to me, and I had a half interest in the shotgun.

Q. When you came there did you have a wagon?

A. Yes, sir; wagon and harness.

Q. Your bed clothes and things were in the wagon?

A. Yes, sir; we had our bed clothes together.

Q. What weapons did you have?

A. Shotgun and a pistol.

Q. What kind of a pistol?

A. It was a Colt's, and we called it a 44 cap-and-ball, if I mistake not.

Q. An old army 44 cap-and-ball; whose was it?

A. It was mine.

Q. Whose was the gun?
A. It belonged to I and Steadman; we traded a colt for it.
Q. You traded a colt that belonged to you together for the gun?
A. Yes, sir.
Q. Is that the gun? (Pointing to gun introduced by prosecution.)
A. If that ain't the gun, it looks like it so much you can't tell it apart.
Q. You would take that to be the gun?
A. Yes, sir.
Q. Were you together every day you were there?
A. Nearly; one time my partner went probably a mile and a half or two miles, and there was a day or so I went five or six miles, and probably six or seven miles.
Q. What did you do with the horses?
A. We fed the horses—the work horses and the saddle horses.
Q. Did you have any work horses?
A. Yes, sir; two.
359 Q. How many saddle horses?
A. Two; a mare and a pony.
Q. Did you have them all the time?
A. Yes, sir.
Q. Did you let them run out?
A. Yes, sir.
Q. Let your saddle horses run out?
A. Yes, sir.
Q. Turned them loose?
A. Yes, sir.
Q. Turned them loose at night?
A. The saddle horses we used every day, and at nights we turned them loose.
Q. Now, can you name any place you went while you staid around there, together?
A. Yes, sir; we went to a widow woman's place—Widow Marshal's.
Q. Where did she live?
A. It would be a little to the left of James'; a little to the left and south; it was about six or seven miles from Lipscomb's store, out on the edge of the prairie, and we went to Gentry's place up the Arkansas River.
Q. He was a brother of Gentry that lives there at Choska?
A. So I understood; that was the place; and then we went to Jeff Marshal's, and to other places that I can't remember the names of them; we went about all the places between Jeff Marshal's and Widow Marshal's.
Q. How far from the Widow Marshal's does Jeff live?
A. About five or six miles.
Q. Did you ever have any trouble with Steadman?
A. No, sir.
Q. Did you ever have any quarrel or words or difficulty?
A. No, sir; we had no quarrel at all.
Q. Did you know anybody in that country but him when you went there?
A. No, sir; not a soul.

Q. Did you know anybody in the Creek Nation or in the
360 Indian country that you had ever seen except him?

A. No, sir; I never saw a person that I had ever saw before.

Q. You had traveled together from Arizona all the way?

A. Yes, sir.

Q. And you had traveled nine or ten days from Oklahoma City down there?

A. Yes, sir.

Q. Across the country driving horses?

A. Yes, sir.

Q. And you had known him for a good many years?

A. Yes, sir; I have known him I think I would be safe in saying—
1879 when I first saw him; I won't be positive.

Q. You say it was the second Monday after you came there that you went out in the country?

A. Yes, sir; and we were at Marshal's place that day.

Q. What were you going there for—you mean Jeff Marshal's?

A. Yes, sir.

Q. Had you been there before?

A. Yes, sir; we had been there once before.

Q. How long before?

A. I don't know just how long; it was on Sunday, I think.

Q. Was that the day before Steadman disappeared or the week before?

A. It seems to me it was Sunday week before.

Q. You know whether it was the day before?

A. No; it wasn't the day before.

Q. That was the second time you had been at Marshal's?

A. Yes, sir; we had been at Marshal's the second time; the
361 first time we were there it was at Mr. Marshal's dwelling, but the second time we went to where he was building a dwelling for one of his renters.

Q. It wasn't at the same place?

A. No, sir.

Q. But at the place where he lived?

A. Yes, sir.

Q. Where he was putting up a house?

A. Yes, sir.

Q. I would like for you to tell what took place on that day—give an account of your travels on that day.

A. Well, we got our saddles on our horses and Steadman went and borrowed a gun for me. I didn't want to take a gun, but he wanted me to take it. I didn't care about taking the shotgun, and we got the guns and started, and the first place we went that day was to Widow Marshal's; and then we went to Jeff Marshal's. We was at the different places between Jeff Marshal's and the Widow Marshal's.

On the way to camp—we started to camp from Jeff's—I don't know what time of day—it was sometime in the afternoon—and we hunted some on the way, and when we got down into the bottom, we got right along there where there was some hickory nuts, and I says, "I will stop and hunt hickory nuts," and he says, "I will not stop," and I stopped and filled my pockets full of nuts, and he went on and I overtaken him, and he was down at the corner of Meagher's field, and he had turned his horse loose.

Q. He was off his horse?

A. Yes, sir; and he told me to take the horses on home. He says,
362 "There is somebody making a run of a deer down through this field and I will go along the fence and see if they won't run after another," and I says, "Dave, there is no use being in a hurry; we have got plenty of time, and I will take the horses down to the corner and wait for you." And I took the horses and went down to the other corner and waited for him.

Q. How long did you wait for him?

A. Not long; about 20 minutes; I don't think over 25 minutes.

Q. Where did you next go?

A. I went then to the other corner of the fence.

Q. What corner was that?

A. Just a little ways. I think it is is 150 or 100 yards—Lipscomb's field.

Q. Where you met these men?

A. Yes, sir; I was waiting for him and these men came, and these men were strangers to me, and I told them if they seen anything of a man with a gun to tell him to come on, I was waiting for him.

Q. Did they go on up the way you had come from or did they go up the other way?

A. I don't know which way they did go, because I never noticed.

Q. How long did you remain there after these men passed?

A. Well, to the best of my knowledge, I had been there before they passed about 15 or 20 minutes—I don't know exactly—and then I went on down to the camp, and it was about dusk when I got there.

Q. Which way did you go?

A. There was a little trail between the corner of the fence and Lipscomp's store.

Q. Did you go by the store?

A. No, sir; I taken the trail between Lipscomp's store, and
363 went around out here to where the horses was running, and taken them to the camp from there.

Col. CRAVENS. Then what?

A. I took them to camp.

Q. Then what did you do?

A. I went and got supper right there at the camp, and then went to the house; it was about an hour after dark, and asked if they seen Steadman——

Q. Asked who?

A. Bruner's woman, and she said no; I told her how I had left him, and I thought it strange of him not to come in; I sat up until late for him to come, and I was uneasy.

Q. Where did you sleep?

A. In the crib, where I and him had been sleeping.

Q. You are certain of that?

A. Yes, sir; I am positive of it; next morning I was getting breakfast out by the fire, and a man rode up and asked me where Steadman was; I said I left him last night, and he said he was going through the farm to see if he couldn't kill a deer, and he never turned up; it was proved afterwards he was one of the men was looking for Mrs. House; that was early;

he was riding a horse, bare back; but I didn't know Mrs. House had gone until I went out to hunt my partner; I went by Lipscomb's store, and there happened to be men there I saw on the evening before and I told to tell Mr. Steadman if they saw him to come on; they happened to be at the store, and they said "Ain't you the man we passed——

Col. CLAYTON. I don't think that is competent.

Col. CRAVENS. Where did you go from the store?

A. I stopped at the James place.

364 Q. What do you mean by the James place?

A. Near where the remains were found; that is the first house I come to on that way; I hollered and called at the fence, and nobody appeared; I wanted to tell them about his being gone; I reported to everybody; I went out to where I left him, up to the corner of the fence, in the woods there near the corner of the fence, and I heard a man chopping on the road that turns off; I went to where he was, and told him my business there, that I had left my partner there the evening before, and he hadn't turned up yet; he said "Don't you know he went off with Mr. House's wife last night?" He said he went away from the store; I went back to the store from there, and I was standing at the store a little while, and somebody spoke up and says——

Q. You know Joe Crow?

A. I don't know the man; I have seen him a few times.

Q. Did you meet him that morning?

A. Yes, sir.

Q. How many times did you meet him that day?

A. Once that I know of; I think that was all; then in the evening I saw him on the flat when I was attending the horses.

Q. You saw him in the morning and evening?

A. Yes, sir; and he said he was looking for some work cattle.

Q. Where did you see him in the morning?

A. Up near the upper corner of Meagher's farm.

Q. That is out beyond James' there?

A. I don't know what direction you would call it.

Q. It was beyond James' from the store?

A. Yes, sir.

365 Q. Which way did you go after you left home?

A. I went a long ways, then I heard this man chopping, and I went out to where he was, and from there I went back to the store.

Q. You went along the east side and met Crow, then went on and went to where the man was chopping, and then you went back to the store?

A. Yes, sir.

Q. Then where?

A. I went back to camp; then Bruner heard of it and he told me of it, and he said they had been around that night before, hunting Steadman.

Q. You learned there they had been hunting Steadman the night before around there?

A. Yes, sir; and for fear they would try and take some revenge on me, I asked permission to sleep in the house.

Q. That was Tuesday night—*m*did you sleep in the house Tuesday night?

A. Yes, sir.

Q. Was that the first night you slept there?

A. Yes, sir; it was the next night after my partner disappeared. I slept in the barn the same night he disappeared; I slept Monday night in the crib where we had been sleeping, and the next day I heard of some people searching in the crib there, and I thought they might happen to take revenge out of me, and I asked permission to sleep in the house, and I slept in the house.

Q. Where did you sleep at the balance of the time?

A. At Bruner's, in the back room there.

Q. You slept Tuesday night in the house?

A. Yes, sir.

366 Q. Did anything take place that night—were you aroused in any way?

A. The dogs barked and I thought maybe my partner had come; two or three different times I got up and went to the *do* door, and I could hear tramping around, and I thought maybe it was him and I would call to him, "Is that you, Dave?" I would say.

Q. How many times?

A. Two or three different times that night.

Q. And you would get up and call Dave?

A. Yes, sir; I could hear the people tramping around; I didn't know who they were.

Q. Do you remember anything about them getting your bed-clothes that night, and the boy going out with you?

A. Yes, sir.

Q. When was that?

A. That was Tuesday night.

Q. That was the first night you slept in the house?

A. Yes, sir; after Bruner had given me permission to be in the house, and he told me about the boys hunting my partner, and he was afraid to water the calf, and he went along with me; I said, "I will get you to help me bring my bed in," and he helped to bring the bed in.

Q. Did you get any corn there for the purpose of feeding your horses?

A. Yes, sir; Mr. Steadman would pay for it part of the time, and I would pay for it part of the time; just how much we got I don't know; whenever I would get corn I would tell Mr. Steadman and he would set it down, and what it had amounted to when he disappeared I don't know; he kept the accounts.

Q. How would he do when he got it himself?

A. I suppose he kept account of it; I am not much on figures

367 myself, and I always let him have the whole say, that is, keeping accounts and all.

Q. Did you have any money then, Alexander?

A. Yes, sir; I had.

Q. How much?

A. About three hundred and sixty dollars, or seventy.

Q. How much did Mr. Steadman have?

A. I don't know; I have no idea; he must have had five or six or seven hundred dollars; I don't know how much. He got money from Albuquerque; at least he said he left money there, and he was talking of sending money off; whether he did or not, I don't know.

Q. You thought he had a considerable amount of money?
A. Yes, sir.
Q. On the day that you were out at Marshal's, the day he disappeared—you know this house called the Rabbit House?
A. Yes, sir.
Q. Did you and he pass by there that day that he disappeared?
A. We did that morning.
Q. Which way were you going?
A. Going out from Choska, out to the open country.
Q. Going east along that fence?
A. I don't know what direction it is; I always thought the river was running south by our camp. I am kind of turned around with the directions there.
Q. Anyway, it was out the road leading to Marshal's. Did you pass that house any more after that, that day, with him?
A. No, sir.
Q. How did you pass?
A. I passed leading his horse.
Q. He wasn't with you at all?
A. No, sir.
368 Q. You had left him back where you came upon him, near the corner of the field?
A. Yes, sir.
Q. Did you notice anybody there?
A. I never noticed anybody about there; I don't think I heard any one.
Q. You went there next morning?
A. Yes, sir.
Q. Did you find anybody there then?
A. No, sir.
Q. You tried to find somebody to make inquiry about your partner?
A. Yes, sir.
Q. You saw this man James here that testified about meeting you up the road; did you see him that evening?
A. No, sir.
Q. Did you have any conversation with him that evening?
A. No, sir.
Q. I will ask you if at any time before that you and Mr. Steadman had passed along that road?
A. Yes, sir.
Q. When?
A. I think the Friday before, I think was the last time before that; it might have been Thursday.
Q. Which way were you going?
A. To camp.
Q. Going towards Choska?
A. Yes, sir.
Q. Do you remember seeing James that time when you did pass there?
A. Yes, sir.
Q. Where did you see him?
A. I wouldn't be sure it was James, but I think it was him.

Q. Where did you see him?

A. At the other side of the little house they call the Rabbit house; a little house standing out in the woods; it is beyond the Rabbit House.

369 Q. It was the first house out beyond the Rabbit House?

A. Yes, sir; that road that turns to the left.

Q. You met a man there, and you are not certain whether it was this man or not.

A. No, sir; but since I have seen him, I think it is him.

Q. You and Steadman were together and going towards camp and it was on Thursday or Friday?

A. Yes, sir.

Q. Do you remember talking to him?

A. Mr. Steadman was aways ahead of me and he was talking to him, but I don't know what; and as soon as I came up he started on.

Q. You were a little behind him, and he came up to the man first and had a talk with him. Do you remember whether the man had a gun or not?

A. Yes, sir; I am pretty sure he had a gun.

Q. The day you and Steadman went out together did you have a pistol?

Q. Did you load a pistol in Bruner's house that day?

A. No, sir?

Q. Where was your pistol?

A. In the wagon.

Q. Where were the balance of your things?

A. In the crib; our bed was in the crib and the others in the wagon.

Q. Was the pistol in the crib?

A. No; in the wagon.

Q. Your bed clothes were in the crib?

A. Yes, sir.

Q. You had a gun that day?

A. Yes, sir.

Q. How was it loaded?

A. With squirrel shot.

Q. Who loaded it?

A. I loaded it.

Q. Where did you load it?

A. There in Bruner's yard.

Q. About the door?

A. Yes, sir.

370 Q. You are certain you loaded it with squirrel shot?

A. Yes, sir; I and Dave was standing there and I about had one barrel loaded when he started and I loaded the other one and went on. He seemed to be in a rush.

Q. Were both barrels loaded?

A. Yes, sir.

A. And you did not have a pistol, nor didn't load your pistol that day?

A. No, sir.

Q. Did you go out with Jim Bruner to hunt your partner?

A. Yes, sir; he came out with me to see a man I wanted to rent a house from; the man lived on a place called the Verdigris, about eight miles from there.

Q. Where did you go?

A. We went to the man's place on the Verdigris; we went there and he promised next Sunday the man that had the place, which was near this house we wanted to rent, he was coming there to church; it was only about three miles away and he agreed to let me have the house, but didn't set any price.

Q. What route did you travel?

A. By James' there.

Q. Did you go back the same way?

A. Yes, sir.

Q. Do you know what that day was?

A. No, sir; he was at work, and I got him to leave off work in the cotton.

Q. Going along there, did Bruner call your attention to any buzzards?

A. No, sir; if he did he did it tolerable low, so I didn't hear it.

Q. Did you notice any buzzards there?

A. No, sir.

Q. Did you hunt much for your partner?

A. I hunted considereble for him, but I never hunted as much
371 as I would have if he hadn't been accused of running off with that woman. I am satisfied if they hadn't made me believe he had gone with the woman I would have found him in two or three days.

Q. They convinced you he had gone with this woman?

A. Yes, sir.

Q. Did you believe that at the start?

A. Yes, sir.

Q. That he had gone with the woman?

A. Yes, sir; Mr. House told me himself that he heard them talking the night before he went away at the house.

Col. CLAYTON. Never mind that.

Q. You did look around for him and inquire for him?

A. Yes, sir.

Q. It was some time after he was gone before you came to the conclusion he had gone with this woman. Did they satisfy you of that fact?

A. No, sir; I thought it from the start, that is, from the time they told me, and he told me he heard them talking there——

Q. From that time you were of that impression?

A. Yes, sir.

Q. When did you get the first information that led you to the finding of the body?

A. I got it from Mr. Perryman; he written a note, and I declare I don't know whether he wrote it to me or Bruner; I think the substance of the letter was, "I understand there is a man lost his partner; if you have not found him come to my place." I didn't take time to read it all.

Q. Who brought the note?

A. A little boy; I don't know his name; it said on it, "hasty." The boy had come in a lather on a sweat. I went and got my horse as quick as I could and started with him, and I come to where Mr. Card was building a house; and I asked Mr. Card to go with me, that it was get-
372 ting late and I didn't know the way; he wanted to know what was up; I told him I could not tell him, I didn't want them to

know anything about what—the boy had told me what it was; I remember he told me he though' my partner's remains had been found.

Q. The boy was going back with you?

A. Yes, sir; it seems Mr. Card, I thought he knew something. He says, "Has your partner been found?" I said, "Not that I know of." I asked Mr. Card to go with me, that it was getting late, and I would pay him for his trouble. He said, "I will have to take the horses out of the wagon; I have got no saddle." I said, "You can take my saddle and I will borrow a saddle." We went up to a house about three or four hundred yards and I went and borrowed his saddle and we went to Mr. Perryman's. I think it must have been—oh, along after dark; about dark when we got there. We stopped there about half an hour and he told us then about an Indian had been out Sunday before down in that country and had run across the bones of a dead person, and he went on and described it and named the place so that Mr. Card knew just about where it was, called the Rabbit House. I didn't know any place by that name at that time, so Mr. Perryman says to me, "This man was found on Sunday, but I have been sick since and this is the first chance I have had to send you word." We came back and Mr. Perryman was to meet us at the place. I went across to the house next morning, after leaving Mr. Perryman's.

Q. Where did you go?

A. To our camp. Mr. Card went to his home and I went to
373 mine. Next morning—I let Mr. Card carry my saddle that night and I carried the other saddle back next morning. I taken my horse and went to Mr. Card's and he was ready and we went on to get this office—he called him an officer—Light Horse. We met him on the way and turned and then went on to the place where Mr. Card and Mr. Perryman was to show us the place, and we waited there a little bit and these other men came.

Q. Where did you wait?

A. Not far from where the remains were. Mr. Card knew the Rabbit house.

Q. Did you find it before Perryman came?

A. I don't know; the people were strangers to me; we got in abreast and went quite a ways along the road; we got in a breast to hunt for it; we went 100 yards or so and run into it. Mr. Card says, from what the man told me, right along here some place between this and the Rabbit house is where it lay.

Q. Did you find him?

A. Yes, sir.

Q. Who found him?

A. Mr. Card, I think; I won't be positive.

Q. What did you find there?

A. We found the bones of Mr. Steadman, and boots on, and spurs, and this gun, I think; looked like that gun.

Q. You recognized it?

A. Yes, sir.

Q. As being the gun you and Steadman owned?

A. Yes, sir.

Q. Did you recognize anything else besides the boots and spurs?

A. I recognized the hat; his hat and a piece of a bank book, and there was a tax receipt and some pieces of papers lying around; there was some money took out of the mud; I had a piece of a twenty—pretty near a whole twenty; I gave it to Mr. Thomas to take care of for me, and somebody else got a part of a twenty and a part of a ten. There was some more little pieces there, but what they were I couldn't tell; they
374 were small pieces; the piece I kept, it showed the number and all; I thought maybe it could be turned into good. I gave it to Mr. Thomas to take care of for me.

Q. That was the deputy marshal?

A. Yes, sir.

Q. Mr. Thomas took charge of your money, also?

A. Yes, sir.

Q. How much did you turn over to him?

A. $340.00.

Q. That was your money?

A. Yes, sir; my hard-earned, honest toil.

Q. Did you make any effort to have any publication of this matter?

A. Yes, sir.

Q. Did you have any letters written?

A. Yes, sir.

Q. By who?

A. I got Mr. John McKitchen to write to his nephew, and I written myself, to Mr. Steadman, here; I didn't know just what place he was in, in California, and I written to Los Angeles. I think I went to him, and I got Mr. McKitchen to write one to Arizona. I also got Mr. West, after I got there, to telegraph.

Q. Who did you get to write to Arizona?

A. John McKitchen.

Q. That is the man who was riding with Heck Thomas?

A. Yes, sir; Mr. Thomas asked me if he had any relations. I told him he had in California, but I wasn't sure whether in Los Angeles or where; I thought it was Los Angeles or San Dusky; I told him he had a nephew in Arizona.

Q. Where did you get Mr. West to telegraph?

A. I think it was to Los Angeles or San Dusky.

Q. You got him to telegraph to the *poaint* you though' he was?

A. Yes, sir.

Q. Wherever you did think he was you got him to telegraph?

A. Yes, sir; and Mr. West told me he would, and I didn't have money enough, and I gave him fifty cents, and he said he would foot the balance himself.

375 Q. Do you remember what you say you had when you left up there?

A. $360.00 or $370.00, and I turned over $340.00 to the marshal.

Q. What kind of money was it?

A. Gold and greenbacks and some silver.

Q. Do you know how much gold?

A. $100.00.

(Recess—ten minutes.)

Q. You stated that after the disappearance of Mr. Steadman you hadn't any acquaintances in that country that you had ever seen before?

A. No, sir.

Q. You had the amount of money you stated. Did you make it public that you had that amount of money?

A. No, sir.

Q. Did you tell anybody what amount of money you did have?

A. No, sir.

Q. Why not?

A. Well, I didn't think it good policy to do it; I was a stranger in the country, and my partner was gone, and I didn't know what had become of him.

Q. Did you tell Dr. Stephens where you last saw your partner; what did you tell him about it?

A. I told Dr. Stephens I left my partner on the other side of Meagher's pasture, and he said he thought he would go through and see if he couldn't kill a deer; that somebody was making a run in there with hounds.

Q Did you ever tell him you saw him last down near at the place where the body was found?

A. No, sir.

Q. Did you ever tell him you saw him last within 75 yards of it?

A. No, sir, I did not, and he knows it; I told him I last saw my partner beyond the corner of Meagher's field.

376 Q Do you remember what you said about the money your partner had carried away.

A. I told him my partner was gone and taken all of his money, and that he was accused of running away with a woman, but whether he had gone with her I didn't know and that I was uneasy about it.

Q. You were uneasy about him?

A. Yes, sir; I was after he didn't come that night, before I went to bed.

Q. You said if they hadn't satisfied you he had gone with a woman you are satisfied you would have found him before a couple of days?

A. Yes, sir.

Q. You would have hunted the country thoroughly?

A. Yes, sir.

Q. Did you give Dr. Stephens the money to pay for an advertisement about the time in the paper?

A. Yes, sir.

Q. Did you make any effort to go to Muskogee before the day you went there?

A. I did; I started the next day after my partner was buried; I went to cross the river; it was raining and a very cold day, and the ferryman was gone. I waited awhile and I went back to the nearest house, and that was the boatman's house, and his wife told me he had gone somewhere to collect a debt and didn't think he would be back before night. I thought I better go home and attend to my horses; the next day I went and made it through to Muskogee. I went there and inquired where the agent's place was; he was the man I was told to go to make my *repor* report to; it was pointed out to me, and I went there. The agent was holding court, or something; some party had stole a hog from another.

I staid there half an hour, probably, before I thought I had a right to speak; they were trying a case. I must have staid there 25 minutes, or half an hour; then I made my business known. He told me: "A man came in just ahead of you and has reported, and the authorities are sent out." He said: "If you ride fast you can overtake them." He said: "They went not more than 15 or 20 minutes past." I calculated
377 to give my mare a feed, but I didn't feed it. I went on, and, I think, I overtaken them five or six miles from town. I rode up to them and I asked for the marshals, and told them I was at Muskogee; that I was a partner of this man; and Mr. West says, "You say you are his partner?" and he throwed his pistol on me face, and I said, "No;" and Thomas threw his arms around me at the same time and taken my pistol.

Q. When you got to camp did you tell Bruner he must not give you away?

A. No, sir; I never did anything of that kind; there was nothing for him to give me away on; and if he came up and told the truth he could have said a little in my favor. He knew nothing in God's world against me.

Q. While there, were you turned over to Bruner?

A. No, sir; I was closely guarded.

Q. Do you know anything about the disappearance of a satchel from your wagon?

A. No, sir; not at all; no, sir; Mr. Thomas asked me where the satchel was, and gave me to understand the satchel was gone. I says "It is in the wagon." He says "It is not." He says "I have hunted the wagon." I went to Caroline and asked her if she knew who taken the satchel; she said Mr. Bruner told her that two men came up and taken the satchel away. I saw then that they were putting up a job on me as fast as they could.

Q. You made a bill of sale to Mr. Steadman?

A. Yes, sir; in Oklahoma.

Q. Was there any made to you of his interest in his horses?

A. No, sir; he simply had my word, just as he had mine from Arizona to where I gave him the bill of sale. In leaving arizona, his interest in the figure—six horse—there was no papers; it was verbal between us same as our last trade.

Q. Did you have anything in that satchel?

378 A. Yes, sir; we had a reloading outfit belonging to this gun, and some newspaper with shells in, and pretty near a whole buckskin and molds for that pistol; there was about 40 brass shells belonging to that gun and a lot of new paper shells that never had been used, and a lot had been used; as well as I remember, that is all the contents of that valise.

Q. When were you arrested?

A. I think about the 8th of November; I won't be positive sure; I think we got into Muskogee on the 10th.

Q. When did you get here?

A. I think the 25th of January; I won't be sure.

Cross-examination:

Col. CLAYTON. What is your nationality?

A. Part colored, sir, part French, and part Mexican.

Q. When you left Arizona, you left there with how many horses?
A. 51 head.
Q. All of them yours but 12?
A. Yes, sir.
Q. Were yours ponies or horses?
A. They were horses; there was two or three ponies in the outfit.
Q. Whose horses were the best horses?
A. I think they were just about the same; I think I had horses just as good as his; I had horses the same stock as the best of his.
Q. What was Mr. Steadman's 12 horses worth?
A. I don't know.
Q. Give us an idea.
A. It depends upon the deman for horses.
Q. What are they worth?
A. I don't know what horses are worth in this country; in that country they ought to be worth seventy-five or eighty dollars apiece.
Q. Didn't he have one horse worth two, or three, or four hundred dollars?
A. I don't think he was.
379 Q. What was he worth?
A. I don't know.
Q. What do you think?
A. He might be worth two or three hundred dollars; he was just a young horse at that time.
Q. What was he worth; he couldn't have been much younger than now; what was he worth when you got to the Indian country with him?
A. I don't know.
Q. Don't commence that already. What do you think he is worth at that time—last October—in the market?
A. I don't know what the market is.
Q. Oh, fiddle dee dee! Now, Mr. Alexander, go right along and answer my questions. What do you think the stallion was worth; you were there during the sale of these horses, you know what Mr. Steadman held him at, you had part interest in him and had him there to sell?
A. I know what we asked for him; we asked $300.00 for him and couldn't get it.
Q. What were the other horses worth; was there any of the other horses worth as much as $200.00 of the 12 belonging to Mr. Steadman?
A. No, sir.
Q. What would the other horses average?
A. I don't know.
Q. And you had them there to sell, and don't know what they were worth. What sort of a horse tailor are you?
A. I made up my mind to sell for less than Mr. Steadman would sell for.
Q. What would the eleven horses sell for apiece, on an average?
A. I have not the least idea what the horses were worth in this country; we didn't sell any since we sold them two; we sold two for $110.00.
Q. But those were yours, your own brand?
A. No, sir; one mine and one his.
Q. You stated awhile ago $75.00 or $80.00; is that good?

380 A. I don't know.

Q. What did you say it for then? I got it from your own lips.

A. I don't know whether it would be good in this country.

Q. I am not talking about this country; I have not got them to sell.

A. I always considered their worth by what we could get for them.

Q. What did you mean by saying $75.00 or $80.00; did you mean it when you said it?

A. I don't know what the horses were worth?

Q. Did you mean they were worth $75.00 or $80.00 when you said it?

A. They might be.

Q. Did you mean it?

A. I don't know whether——

Q. Shall I put it at that?

A. Well, I wouldn't give that for them.

Q. Well, I will put it at $75.00, the lowest, because you said it; that would make $1,125.00 for these twelve horses, counting the stallion at three hundred dollars. I understood you to say that you borrowed from Stoadman $150.00?

A. Yes, sir.

Q. That he had these horses when you started to leave Arizona; you wanted him to take two horses for this $150.00?

A. Yes, sir.

Q. But finally he concluded that he would buy a half interest in your horses?

A. Yes, sir.

Q. And that you wanted $600.00, including the $150.00?

A. I wanted $600.00 for a half interest to the horses, all excepting one horse, and the $150.00 was to pay a part. He was to pay the expenses.

Q. But finally you let him have them for $550.00 and he pay the expenses. $150.00 then you owed him; he was to pay you $550; that left him owing you $400.00?

A. Yes, sir.

Q. You got down here to Muskogee and he paid you $200.00?

A. Yes, sir.

381 Q. That left him owing you $200.00?

A. Yes, sir.

Q. With a half interest in your own horses, and owning his own horses—is that right?

A. He owned a half interest, and all of his own, you say.

Q. Yes, sir.

A. I don't understand that.

Q. When he paid you $200.00, that left how owing you $200.00?

A. Yes, sir.

Q. And left him with a half interest in your horses, and if he had paid you the other two hundred, he would have a half interest in your horses, and all of his own?

A. When the last payment—when he paid me the half of it, $400.00, then it is when our last trade was made.

Q. If you had not made another trade, he paid you that other $200.00, and it would still leave him owing you $200.00, and you had not made another trade, he would have owed you $200.00 of it, then he would have owned his own horses, and a half interest in yours?

A. Yes, sir; excepting one.

Q. He would have the whole of his own horses, and would have had a half interest in your horses, and would have owed you $200.00?

A. Yes, sir.

Q. He paid you $200.00, and then gave you a half interest in his horses—for what was that?

A. If I would pay a portion of the expenses from that on?

Q. That was at Muskogee?

A. Yes, sir.

Q. He would do what?

A. We would stand equal partners in all the stock.

Q. What became of the $200.00?

A. He says: "I will pay you half of what I owe you now, and we will stand equal partners."

Q. Then he still owed you $200.00?

382 A. I would suppose he did; yes, sir.

Q. And you owned half of his horses?

A. Yes, sir; that is, I only had his word for it.

Q. And he was to pay three-fourths of the expenses?

A. We were to pay equal portions.

Q. You said three-fourths of the expenses when you were talking to Mr. Cravens?

A. No, sir; I said my portion of the expenses.

Q. The he gave you a half interest in his horses to pay your share of the expenses—in other words, nearly $600.00 worth of horses?

A. He didn't want me to split up.

Q. I am getting at the figures; he was giving you half of the horses that he brought down there at an enormous expense, and paid the expenses of your horses, and gave you a half interest in his horses?

A. That was the agreement.

Q. And he still owed you $200.00?

A. The agreement was——

Q. I believe I am right. If I am right, say yes. Then at the time he was killed, he owed you $200.00?

A. I would suppose he would when he paid me only half.

Q. He owed you $200.00 by the contract?

A. Yes, sir; I consider——

Q. And you had a half interest in his horses as well as a half interest in your own?

A. Yes, sir.

Q. He paid all the expenses to get them down there. How much did he pay to get them to Oklahoma?

A. $300.00, I believe.

Q. He only had 12 horses and you had 40.

A. Mr. Steadman said——

Q. I don't want any 'what he said.' Answer my question?

A. He said he paid $300.00.

Q. How much for feed did he pay?

A. Not much; I don't know.

383 Q. How much did he pay at Oklahoma for your half of the feed?

A. We didn't feed at Oklahoma.

Q. Did you have any expenses?

A. The expense of simply herding horses; we didn't have to pay anything for them there.

Q. It cost you something to drive them to the Indian country from Oklahoma?

A. It only cost our help in helping a man put up a house.

Q. After you got them to the Creek Nation?

A. It didn't cost much; we didn't feed to anything but saddle horses.

Q. It didn't cost much, and yet he was willing to give you a half interest?

A. That was our agreement; it was this way——

Q. Never mind that. You say they did not cost much after you got down to the Indian country, and yet you say he paid you one half of his valuable herd of horses in order that you might share the expenses. How much money did he have?

A. I don't know how much.

Q. What were you doing carrying so much money around that country?

A. It was my money.

Q. Why not put it in the bank?

A. Because I wanted to have it in my pocket.

Q. What is the reason? Mr. Steadman was a business man.

A. Not that I know of; no, sir; I never knowed Mr. Steadman being a business man; I think he was just like myself.

Q. What made you think he had six or seven hundred dollars on his person?

A. I don't know; I think he had quite a roll; I think he had that much.

Q. Where did he get it?

A. He left money at Albuquerque, New Mexico, he said, and was going to send for it to send it off; he claimed he was going to send money
384 away; I know he must have had some hundreds of dollars.

Q. You say that you did not tell these gentlemen up there that this man had gone off with one half of your money?

A. No, sir.

Q. Do you know this young gentleman here? (Pointing to Mr. Ralls.)

A. Yes—I don't know him.

Q. Did you go to him at Muskogee?

A. I never saw him that I know of; I never had an attorney at Muskogee; no, sir. I never went to see an attorney.

Q. After the time your partner disappeared, and before the body was found, I will ask you if you did not go to Muskogee and see Mr. Ralls there, and if you did not tell him that your partner had gone off, disappeared.

A. I never saw that man that I know of.

Q. That your partner had disappeared and if he hadn't taken all the money of the partnership, your money and his too, and if you did not ask his advice as to whether or not you could not keep Mr. Steadman's share of the horses for what he owed you?

A. No, sir; nor I don't know the gentleman. I made no statement in Muskogee.

Q. Anywhere else?
A. No, sir.
Q. Stand up, Mr. Ralls. Did you ever see him.
A. I never saw that man that I know of anywhere; he is a stranger to me.
Q. You did not make the statement to him that I have stated, nor to any other lawyer?
A. No, sir; I don't know an attorney at Muskogee; I didn't see any; if I did, I didn't know he was an attorney.
Q. If you saw him at all, it was as an attorney. You were not seeking anybody's advice as an attorney?
A. No, sir; I went to the agent there to make a report, and I was told he was the agent living in a little white house there. I hadn't been
385 in Muskogee from the time I left to go to Choska until I went on account of my partner's remains being found, to see the agent.
Q. I will ask you if you did not see Mr. Ralls, not only tell him about that, but also ask him if you could not hold Mr. Steadman's share of these horses for your share of the money he took away with him—if you did not ask him if you could not move the horses away from there, and he advised you to let them stay there?
A. As sure as my God, it never passed through my lips.
Q. You deny saying that to him?
A. Yes, sir.
Q. You deny saying to any of these gentlemen who have sworn here that you stated to them that your partner had gone off with both of your money?
A. I never tols anybody that.
Q. You did not tell Mr. Stephens and both of the Oreutts that?
A. No, sir; nor anybody else.
Q. You say that when you got that letter from Mr. Perryman that that was brought to you by a boy?
A. Yes, sir.
Q. And the boy went back with you to Perryman's?
A. Yes, sir.
Q. What did you take Card for?
A. I didn't know the way back.
Q. But the boy was there going with you?
A. Yes; but the boy told me he belonged to another place.
Q. What did you want Card for?
A. I was a stranger in that country, and I wanted him to go with me.
Q. You had been riding over the country for eleven days?
A. I hadn't been to Perryman's.
Q. But if the boy took you to Perryman's you could find the way back?
A. I might, but I might have trouble in so many different roads.
386 Q. You deny passing by the Rabbit house at all on that evening in company with your partner?
A. Yes, sir.
Q. That is not true, what these people have sworn to?
A. I say I didn't pass there that evening with my partner.
Q. You came by there leading your horses?
A. Yes, sir.

Q. Where did you leave your partner?

A. Near the corner of Meagher's field.

Q. You deny the statement of Dr. Stephens that the last you saw him you left him looking at a squirrel up a tree?

A. I will, sir.

Q. You deny stating that to anybody else?

A. I didn't state it to nobody, sir.

Q. Was he looking up a tree when you left him?

A. He was walking around a tree, looking as though he was looking for squirrels.

Q. Then you did tell somebody that you left him looking up a tree?

A. He *cofined* there was a squirrel; he says to me, "Take the horse and go on; they are making a drive in this pasture, I think; down here" [we could hear the dogs bark], "and I will go and see."

Q. Did you hear any shooting?

A. I don't know; I won't be positive; I don't think I heard a gun shoot that evening; I don't remember.

Q. Did you bring your gun home loaded?

A. Yes, sir.

Q. Did you show it to anybody?

A. I taken the gun and put it up in Bruner's house.

Q. What kind of loads in it?

A. Bird shot loads in it—squirrel shot.

Q. You had the bird shot before it?

387 A. I meant to say squirrel shot; I simply spoke a little too fast.

Q. You heard Mr. Bruner swear one of them had bird shot in it, didn't you, and that is just a slip of the tongue?

A. I told the truth when I said it was squirrel shot.

Q. When you said bird shot that was a slip of the tongue. Do you know how that happened to slip on your tongue?

A. Well, if a man didn't tell it intentionally and corrected it directly

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Q. Do you know how it got on the end of your tongue and slipped off before you could catch it. Can you give me any idea how that "bird shot" happened to get on the end of your tongue before you could catch it?

A. There is a great many will call bird shot squirrel shot; I have known a great many.

Q. Is that the reason you said that?

A. You can call it squirrel shot, or what you have a mind to; I would call it number four or six shot.

Q. Where was his horse when he was standing off of it?

A. Standing out about 100 yards from him.

Q. In what direction?

A. Towards camp.

Q. How far?

A. About 50 yards; maybe a little farther than that.

Q. Was there anybody at home at the Cochran house when you passed it?

A. I didn't pass by that house that evening.

Q. You must have done it, I guess.

A. No, sir.

Q. If you passed by the Rabbit house you did.

A. You can pass by without passing that house; that house lays out in the woods aways.

Q. How far from the Rabbit House?

A. I don't know how far, but it is out aways.

Q. Did you pass by that house?

A. No, sir.

388 Q. What is the reason?

A. I didn't have to; there was a nearer way to go.

Q. Did you come in the road?

A. Yes, sir; what was a nearer way, pointed out by a young gentleman living in that country; it might not be; I went what I considered a nearer way.

Q. You were on the road?

A. Yes, sir.

Q. I would like to know what road it was if you did not go by the Cochran house; if there is any other road there I don't know it, and I have not heard of it, except the road by the Cochran house. I guess you are mistaken about that.,

A. No, sir; I am not.

Q. What road did you go?

A. I never went by this house you are speaking about.

Q. How did you go?

A. There is another—there is a way—a road cut along the fence, ain't there?

Q. You left that house to your right?

A. I came right between that house and James's, and then came into the road there.

Q. You say you were in the road all the time?

A. I didn't say I was in the road all the time.

Q. You came to where your partner was in the road?

A. He was off to the left of the road; not far.

Q. How far to the left?

A. About 100 yards; maybe not that far.

Q. Have you ever pointed out that place to anybody?

A. I have told them the other side of Meagher's farm.

Q. Did you see old man James on the day the body was buried?

A. I think he was there at the burying ground.

Q. When he asked you where it was the man got over the fence to go into that field, did you point it out to him?

A. No man ever asked me where he got over the fence.

389 Q. Did he ask you anything about it?

A. If he did, I don't remember him speaking about it.

Q. That is the day of the shooting when you and Johnson were together.

A. I never had any words with him at all, sir.

Q. Are you sure of that?

A. Yes, sir; I had no such conversation with him, or anybody of that kind.

Q. Didn't you point out to the people where you left that man?

A. I said, "The other side of this pasture here."

Q. Who did you tell that to?

A. I don't remember who, but I know it wasn't him. I never told or showed anybody, because I never was right there at the place with anybody.

Q. When you left that man there, you left leading his horse?

A. Yes, sir.

Q. You left him out there?

A. Yes, sir.

Q. And you never saw him any more alive?

A. No, sir.

Q. But the place where you left him, he was found dead—near it?

A. No, sir.

Q. How far?

A. I don't know how far; I can show you on the map there.

Q. How far do you say it would be?

A. Five or six hundred yards; may be more.

Q. What time of day was it you left him there?

A. Late in the evening.

Q. Five or six o'clock?

A. No, sir; not that late; I think between four and five, somewhere; I didn't know the time of day.

Q. Did you ever examine that hat and see this fine bird shot holes in it?

A. No, sir; I just seen the top was torn out, and I thought maybe the hogs had torn it.

Q. You see some fine bird shot there?

390 A. I don't know; I never noticed any in it.

Q. Have you not noticed any in it since I called the jury's attention to it the other day?

A. I have not had hold of it.

Q. Did you notice the bird shot in it before I found them?

A. No, sir; I picked it up and looked at it out there on the ground.

Q. How far from the corner of the field was it you left this man?

A. About as far as from here to the outside of that fence.

Q. The iron fence out there?

A. Yes, sir; I mean the fence where you come in to come in the house.

Q. A couple of hundred feet?

A. Yes, sir; maybe more.

Q. Did you tell Mr. Orcutt your partner had left you in Oklahoma once and was gone nine days?

A. I said he did and was gone several days.

Q. You deny telling old John Orcutt that your partner had gone and taken all the money from both of you?

A. Yes, sir.

Q. Both of your money?

A. Yes, sir.

Q. Did you tell McKinney before the body was found, that you knew your partner was killed?

A. No, sir; I did not.

Q. You deny that?

A. I undoubtedly do; I didn't do it, nor any other man, for I didn't know where he was.

Q. You went to Muskogee one day?

A. I did.

Q. What day was it you went?

A. It was the same day the marshals arrested me.

Q. Were you at Muskogee any other time except when you first came in there?

A. That was the second time when I went to see the agent.

Q. When you went to the body, what was the first thing you saw there?

A. I think the gun was the first thing.

391 Q. Who was it found the piece of skull, with a bullet hole in it?

A. I don't remember.

Q. You did not tell Caroline that you thought he killed himself?

A. No, sir.

Q. When you came home after finding the body and burying it, with Mr. Card, did you tell him that maybe those "white people" suspicioned you of killing him, and asked him to go up there and see them?

A. No; I didn't say it; I didn't make any such statement. (To the jury.) Gentlemen, I didn't.

Q. You did not tell Mr. Card maybe they will suspicion you, and for him to go up to the store and see and find out, and then come back and tell you?

A. No, sir; I didn't.

Q. You went and found the body with the others; you saw where the hogs had eaten it up; it looked pretty bad?

A. Yes, sir; it was bad, it was bad.

Q. Did you cry over it?

A. No, sir; I didn't, but I felt bad over it.

Q. You buried it; how much money did you see?

A. I don't know; I saw a piece or two pieces of twenty dollar bills and a piece of a ten dollar bill, and what the others were I don't know; I know it was money—greenbacks—the pieces.

Q. How many pieces did you see?

A. I don't know; quite a lot of little pieces.

Q. Three or four?

A. More than that.

Q. As much as would spread over the whole of that thing [Pointing to jury platform]?

A. Oh, no; I saw a good many pieces; some mashed in the mud, and dug out of the mud, buried down in the ground.

Q. Who put the bones in the coffin?

A. I don't remember who; I helped to dig the grave.

Q. Did you?

A. I and Mr. Card put some of them in there.

Q. What did you put in?

A. I helped Mr. Card to put the legs in.

Q. Did you take that gun home with you?

A. Yes, sir; I did—not from there; it went from there in a wagon up to the store.

392 Q. After that you next claimed it was yours?

A. I have a half interest in the gun; I claim the figure colt for that gun.

Q. And you claimed a half interest in the stock. What became of that bill of sale?

A. There was one part of one found there, and nobody knew anything about the bill of sale until I told it myself.

Q. Who took it?

A. I don't know; there was many pieces of paper laying around there.

Q. Didn't you tell the people the body was recognized by a bill of sale found on the body?

A. No, sir; I recognized the body myself; and the question was asked if it was Mr. Steadman, and if they will speak the truth they won't. I said it was Mr. Steadman.

Q. What became of the bill of sale?

A. I saw none; only just a portion of it.

Q. That portion it was very much to your interest to keep?

A. I laid them pieces on a little bush.

Q. But the bill of sale belonged to you; what was he doing with it? He gave you a bill of sale for half of his horses.

A. He never gave me a bill of sale.

Q. I understood you to say that——

A. He gave me no bill of sale, sir; I gave Mr. Steadman a bill of sale.

Q. Why did you not have him give you a bill of sale, too?

A. I gave him no bill of sale on the start from Arizona.

Q. When you had a contract in Muskogee and passed papers, why is it you gave him a bill of sale, and he did not give you any?

A. If he had been alive, and wanted to account of not having papers——

Col. CRAVENS. Never mind that.

Col. CLAYTON. How far from the Rabbit House was it you found those bones?

A. Two or three hundred yards; maybe more, and maybe not so far.

Mr. BARNES. I believe we will rest, your honor.

393 And defendant further to maintain the issues upon his part, proved by J. L. Terry, that on the day after the disappearance of said deceased, David C. Steadman, and Mrs. Georgie House, that he saw Samuel House, the husband of Georgie House, and several others, relatives and friends of Samuel House, riding around the neighborhood armed with Winchester guns and pistols, hunting for deceased, David C. Steadman, and the said Mrs. Georgie House, who were then believed to have eloped together, or to be secreting themselves together in the neighborhood, and offered to show by said witness and Harvey Garrison that said Samuel House and the party with him, while hunting said Steadman and Mrs. House as they said, made violent threats against the life of the said Steadman, and stated that if they could only find him their Winchester guns and pistols would settle it.

Upon the objection of the district attorney to the admissibility of the threats made by House and party while hunting Steadman and Mrs. House, and their declarations that their guns and pistols would settle it whenever they found Steadman, the said testimony was excluded by the court, to which ruling defendant at the time excepted.

Thereupon the Government offered in rebuttal the testimony of J. G. Ralls and Scott Gentry, who testified as follows, to wit:

394 *Government's rebuttal.*

J. G. RALLS.

Col. CLAYTON. Where do you live?

A. At Muskogee.

Q. What is your business?

A. Practicing law there.

Q. Do you know Alexander, the defendant here?

A. I think I seen him once before.

Q. Where?

A. At my office at Muskogee.

Q. When was it?

A. It was about the time of the Muskogee fair, I think, in October.

Q. Do you remember of a man by the name of Steadman being missing up in that country?

A. Yes, sir.

Q. Do you remember hearing of his being found?

A. Yes, sir.

Q. State, in relation to these two circumstances, when it was you saw him—before or after the body was found?

A. I think probably a week afterwards I heard the body was found.

Col. CRAVENS. You saw him before you heard the body was found?

A. Yes, sir.

Q. About a week?

A. Yes, sir.

Q. It was about a week before the body was found he came to your office?

A. Yes, sir; before I heard it was found.

Col. CLAYTON. I will ask you if he made a statement to you there in regard to certain horses and his partner—state if he made any statement to you there in regard to certain property he had, as to whether his partner took off the money belonging to both of them and as to whether

395 he could hold the property of Mr. Steadman for what money he took off——

Col. CRAVENS. Don't answer that.

Col. CLAYTON. I will ask you further if he paid you any fee?

A. No, sir.

Q. Did he ever pay you any fee?

A. No, sir; I disremember about that.

Mr. BARNES. Did he come to you?

A. He asked if I was an attorney.

Q. Did you advise him as an attorney?

A. Yes, sir.

Col. CRAVENS. Did you as an attorney?

A. Yes, sir.

Mr. BARNES. I don't know what view the court has of this matter but we object to the testimony.

The COURT. The objection is overruled.

Col. CLAYTON. You may state now what he said to you when he came to your office?

A. One evening—I believe to the best of my judgment that is the same man (pointing to the defendant); he had short whiskers on at that time; he hadn't been shaved for a couple of weeks: the substance was this: He asked me if I was an attorney; I told him I was; he said his name was Alexander, and he went on to state that he and his partner had some forty head of horses across the river in partnership and that some time before that, probably a week before, his partner was missing and he hadn't heard from him. He says his partner had a brother in California and he was afraid his brother would come up there and make some trouble about the horses; he stated at the time his partner had taken off the money and he wanted to know if he could hold the horses so as to secure his part
396 of the money. I him if the horses would pay him for his part and he said it would; I told him to hold the horses, they couldn't take them until that was settled.

Q. Did he say anything about taking the horses away out of the country?

A. There was something mentioned about that, I don't remember what that was.

Q. He said his partner had gone off and carried with him their money, the money of both of them?

A. He didn't put it that way; all their money, he said; and he wanted to hold the horses to secure him in the payment of that part of the money which belonged to him.

Q. That his partner had carried off?

A. Yes, sir; that is the substance.

Cross-examination:

Col. CRAVENS. Did you say that was in the evening?

A. Yes, sir; I think.

Q. About what time?

A. I couldn't say; probably a short time after dinner; my partner, I don't think, had come back from dinner.

Q. Who was your partner at that time?

A. Mr. Crawford.

Q. What time in the evening?

A. I don't think I could make a good guess at that.

Q. Give us the best you can; you were there and he says he was not.

A. Well, probably two or three o'clock.

Q. You are just guessing at that?

A. That is just a guess.

Q. Were you the only lawyer in town?

A. No, sir; the town is full of them.

Q. Where was your office at that time?

397 A. Right at the south end of the Phœnix building, where they first held court.

Q. That is the south part of town?

A. Yes, sir; the south part of the business part of town; right opposite 's store.

Q. And that was the extreme south business house. The business part of town lies north of that, and towards the Arkansas River?

A. Yes, sir; except some buildings built there lately.

Q. Have you told all he said about it?

A. I wouldn't be positive; it may be something was said about advertising in the paper.

Q. For relatives?

A. Either his relatives, and hearing of the body being missing——

Q. How long was he in the office?

A. I don't think over five minutes.

Q. How was he dressed?

A. I think he had on what I call dark clothes and a white hat.

Q. Did he have on an overcoat?

A. No, sir.

Q. That was during the fair, you say?

A. No, sir; that was after the fair, I think.

Q. How long after the fair?

A. Well, it was right away after the fair; I think the fair closed, probably, on Friday; I don't know whether it was in that week or the first of next.

Q. Have you ever been at Choska?

A. Yes, sir.

Q. That is on the north side of the Arkansas River?

A. Yes, sir.

Q. Twenty miles from Muskogee?

A. Well, it is seventeen.

Q. Was it fair week, or the week after?

A. I won't be positive; it might have been a week after the fair week.

Q. Did you make any memoranda or charges against the boy?

A. No, sir.

398 Q. Did he say anything to you about paying you a fee?

A. I don't think he did.

Q. He was consulting you about a matter of property that day, forty or fifty head of horses?

A. Yes, sir.

Q. Are you in the habit of consulting without a fee?

A. It was an every day occurrence. I told him there was no law to give him what he wanted.

Q. You think that was as late as 3 o'clock in the evening?

A. It might have been.

Q. Can't you figure whether or not it was the first or last of the week?

A. No, sir; I can't.

Q. Do you know what day of the week the fair began?

A. I think probably on Tuesday; I am not sure.

Q. What day did it close?

A. Either Friday or Saturday; I am not certain.

Q. If it was after the fair it would be the next week?

A. Yes, sir.

Q. Don't you know it was not during the fair?

A. I wouldn't be positive about that.

Q. Could you be positive it was the first part of the week or the latter part of the week?

A. It was either right at the last part of the week or the first of the week.

Q. It was not about the middle of the week?

A. I think not.

Q. It was at one end and you can't tell which end?

A. No, I wouldn't be positive about that.

Q. Anybody else in the office?

A. My partner came in just as he went out, and probably spoke, I don't know; they met right at the door.

Q. I understood you to say a while ago that your partner had
399 gone to dinner?

A. Yes, sir; nobody there but me.

Q. W'y do you bring him in just as this man leaves. Do you recollect that your partner came in there as this man left?

A. Yes, sir.

Q. Have you a recollection of that?

A. Yes, sir.

Q. Did you introduce him to that man?

A. No, sir; I says, "There is my partner; if you want that advertising done, he will attend to it for you."

Q. I understood you to say your partner wasn't there?

A. He wasn't when he came.

Q. Did you see the advertisement in the "Phoenix" paper?

A. No, sir; it might have been, and I wouldn't have seen it. I want to say I was at Choska in March; I defended Mr. Johnson.

SCOTT GENTRY.

Col. CLAYTON. You are the owner of the place upon which Braner lives?

A. Yes, sir.

Q. Where those men, Mr. Steadman and Alexander, were camped?

A. Yes, sir.

Q. Did you see Mr. Steadman and this defendant up there when you were there?

A. Yes, sir; once.

Q. Are you pretty well familiar with that road leading on the north part of Meagher's field up there?

A. Yes, sir.

Q. Do you know whether or not the weeds were cut off from the north line of fence last fall; if so, what time?

A. Along about the last of August or first of September, as well as I remember.

Q. It was before Mr. Steadman was missing?

A. Yes, sir.

Q. What kind of a road is that—bottom road?

A. Yes, sir.

400 Q. Hilly or level?

A. Level.

Q. How far along the road could you see, say up there about the Rabbit house, about the northeast corner?

A. If I was out on the road, almost over one end of the farm.

Q. Have you been down around the place where the killing occurred, since?

A. Yes, sir; several times; four or five times.

Q. How was it with regard to the weeds between where the body was —the killing—and the Rabbit house along that part of the field?

A. Not very many weeds.

Q. They had been cut down there?

A. Yes, sir.

Q. I will ask you if standing out in the road there, or standing around in that space between the fence where the weeds were cut out, whether you could see down that road west.

A. Yes, sir; I could show you, if I had a piece of paper; I could lay off that place for you.

Q. There is a map?

A. I would rather make a map of my own.

Q. We have not time?

A. Here is the fence. The road runs down by the side of the fence; here is the Rabbit cabin; there is a gate down the fence a piece from that cabin. There is a little piece cleared around this cabin and runs quartering down below the gate from the cabin here; it is quartering out down to there; there is a point of brush; from this cabin, you can see a considerable distance down that fence.

Q. Can you see as far as the body was, if you were standing alongside of that fence, inside of the fence there at the Rabbit house, or anywhere around the Rabbit House; could you look as far as the body was lying?

A. Yes, sir; I saw some distance beyond that, even standing anywheres between the fence and the cabin.

Q. Do you know where the body was lying, as to whether there
401 was a swag in the road right there or not?

A. Well, no, sir; there might be little holes along, but no swag to amount to anything at all.

Q. Could horses be seen out there in the road by the people?

A. Yes, sir; could see a hog.

Cross-examination:

Mr. Barnes. You could see anything. How high was that wire fence?

A. I never measured it?

Q. How high was the p'sts?

A. Supposed to be five feet high.

Q. You say there is no rise in the road at the gate, or beyond the gate?

A. No, sir.

Q. Perfectly level?

A. Unless a wagon hole; there might be a little swag?

Q. You indicated just a little hole, knocked out by a wagon?

A. Of course, in traveling a road, there is always little places that don't amount to anything hardly.

Q. And you can stand inside of the wire fence, and the posts over eight feet high, as high as a man's head about the cabin, and see inside and out?

A. Yes, sir.

Q. How near does the weeds and brush come to that fence near the gate?

A. Within 15 or 20 feet of it.

Q. Do you know of any logs and weeds being piled up there and some piled back on the edge of the bursh, and some piled in that space too?

A. Yes, sir; that is cleared out around the cabin.

Q. It is woodland all along there on each side?

A. Yes, sir.

Q. Thirty or forty feet space with a wire fence in the middle?

A. Yes, sir; about that.

A. How far south of Choska do you live?

A. I call it between half and a quarter from Choska store down to my house.

402 Q. Then you lived over two miles from the spot?

A. I never measured the road, but guess it to be a mile and a half or two miles.

Q. If you remember so definitely about these weeds and brush, why can't you tell us whether it was August or September they were cut?

A. I couldn't tell. I remember riding along there and seeing the weeds cut.

Q. Who cut them?

A. I don't know.

Q. You think back, and remember within a month of when you saw that up there; if it had been in August, would anything else grow up, another crop come up between that and *winter*?

A. From the last of August not much of a crop, it might grow up a little weeds.

Q. Not a very heavy crop growed?

(No answer).

403 (Defendant objected to the testimony of each of these witnesses, in that it was not in rebuttal of his testimony, and his objection being by the court overruled, defendant at the time excepted.

Defendant also objected to the testimony of J. G. Ralls, as to a statement alleged to have been made to said witness by defendant, and his objections being by the court overruled, and said testimony being allowed to go to the jury, defendant at the time excepted.)

This was all the testimony offered at this time by the Government in rebuttal.

Thereupon the defendant offered in rebuttal the testimony of William H. Alexander (defendant), who was recalled for that purpose, and testified as follows, to wit:

404 *Defendant's rebuttal.*

WILLIAM ALEXANDER—(Recalled.)

Col. CRAVENS. How many times were you in Muskogee?

A. Twice in all; first when I came, and when I went to see the——

Q. When you first came with the horses, and sold a few mares?

A. Yes, sir.

Q. Were you ever there again before you went and reported to the agent?

A. No, sir; as sure as God in heaven.

Q. After you went to Choska with your partner, did you cross over on that side again until you went over, and was arrested on that day?

A. No, sir; never after that.

Q. Did you stay away from Choska, or your camp any night at all from the time you went over there until you were arrested?

A. No, sir; nary night.

405 Thereupon the Government called in its surrebattal the witness A. D. Orcott (recalled), who testified as follows, to wit:

406 *Government's re-rebuttal.*

A. D. ORCUTT.

Col. CLAYTON. Are you familiar with that road running up there on the north side of Meagher's field?

A. Yes, sir; I cut that lane and surveyed and laid the farm off.

Q. And run that line?

A. Yes, sir.

Q. Did you cut it out?

A. Yes, sir; I helped to set the most of the posts, then sold out my interest to Mr. Meagher's; I owned a half interest up to the time I sold it.

Q. What kind of a road is it as to its being level or hilly on the north side there?

A. It is nearly level.

Q. Bottom road?

A. Yes, sir.

Q. There is a slough there?

A. This corner is a little bit low in looking west from the Rabbit house; the posts lay kind of—you can see the lay of the land, not exactly level, yet it is almost level from here to that corner.

Q. I will ask you if you, in setting the posts, could see them all along here?

A. Clear along until we got right at the corner.

Q. Standing beside the house and sighting the posts opposite the house up to a point opposite to where the body lay, could you see the posts as you set them all the way up there?

A. I could see the line clear to the corner from the Rabbit house.

Q. If horses were standing opposite the place where the man was killed, say near 15 or 20 or 30 yards, either up or down?

A. I believe I could see horses anywhere along that line from the Rabbit house to the corner.

407 Cross-examination:

Col. CRAVENS. Have you ever been there to try that, to see whether you could or not, to make a special examination?

A. No, sir; only just remembering.

Q. From having surveyed the ground and setting the posts; you have not been there to make a special examination to see whether you could see all the way there or not?

A. No, sir.

Q. All you know is just from your observation from clearing out the fence, Joe, and making the fence?

A. Yes, sir; that was a thick bottom when I went in there.

Q. You have not tested it really to see whether you could or not; you just thought it had the general appearance of a level bottom?

A. We had high posts set with flags and we could see clear through?

Q. Doubtless you could. I will ask you if you did not have flag posts 15 or 20 feet high?

A. We had about half way; we undertaken to run——

Q. How high were your flag posts?

A. We had one 15 or 16 feet high; we disposed with these tall sticks and just took ordinary sticks, about something like this high, and finally down to about this high, so we could see over the top.

Q. Your knowledge is acquired from only working at the fence?

A. Yes, sir.

Q. You have not been there to make a special test?

A. No, sir.

Q. How far was the body from the Rabbit house—do you know where it was found?

A. Yes, sir.

408 Q. Not far, was it, from the house?

A. I reckon it to be about 250 or 300 yards, somewhere.

Col. CLAYTON. I will close the case, your honor.

(End of the testimony.)

This was all the testimony offered on either side in the case.

409 Thereupon the court permitted the district attorney to waive his opening argument in the case, and the court then required counsel for the defendant to proceed with their argument in the case; after which time the district attorney closed the argument of the case.

To which action of the court in permitting the district attorney to waive his opening argument the defendant at the time offered no objection.

Whereupon the court charged the jury orally as to the law of the case, which charge was taken at the time of delivery by the court stenographer, as follows, to wit:

410 Copy.

In the circuit court of the United States, within and for the western district of Arkansas.

UNITED STATES,
vs.
WILLIAM H. ALEXANDER. } Murder.

Judge's charge.

JUNE 21ST, 1890. 8.30 a. m.

PARKER, J.

GENTLEMEN: The defendant is charged in this case with that offense known to the law as murder—is charged with being guilty of murder, because on the 21st day of October, 1889, in the Creek Nation, he took the

life of David C. Steadman, who is alleged to be a white man and not an Indian, with a gun—by shooting him to death with a gun. In addition it is stated in the indictment that he did this wilfully, and of his malice aforethought. Now, that goes to make up the crime of murder, if it is established. Of course, if we could understand what this crime was by simply reciting the charge to you, and permit you to apply the statement to the case, as set out in the indictment, from the evidence, the duty of the court would be very short. But that justice may be done it is necessary that you should correctly understand exactly the nature of a case of this kind.

411 You are aware that there are two elements that enter into your verdict. Both of them must exist, and enter into the verdict that is found by you. The first element is the truth of the case. We get that by taking the evidence coming from the witnesses, weighing it and examining it in the way the law contemplates. You weigh and examine it as reasonable, just and impartial, evenminded men do; examine the facts, and find what is exactly the truth of the case. Then you go to the law to ascertain what the law says must be found in order to make out such a case as is charged against the defendant. To do that correctly we must take apart this crime as charged, and see what elements enter into it. In this way we more accurately ascertain what is meant by it than when we undertake the whole proposition at once. It is just like a mechanic: He can understand the structure of a house, and the man who is learning how to construct a house can learn better by examining each piece of timber that enters into the house, than he can to look at the whole frame and undertake to comprehend it at once. He takes each piece of timber, looks at each mortice, looks at each place that is an appropriate place for that piece of timber, and in that way he learns to understand the rules of mechanics, and the mechanism that governs in the structure of the house. Our minds are of that nature that if we can concentrate our thoughts upon one proposition at a time, and solve that, and put it aside as solved, we are more apt to come to a correct conclusion than if we undertake to solve all the propositions that enter into the conclusion at once. We necessarily, are likely to get confused when we undertake to do that.

412 Now, in the trial of one of these cases, the great duty of those who try the case is to note every fact and every circumstance; lay them away as they fall from the lips of the witnesses for future use. We separate the facts that are true from those that are not true, or those that prove anything from those that do not prove anything, and in that way get at the truth; and then, after that, we must go to the law to see what the rule of law is that defines the crime and make an application of that rule to the case, to see whether the rule defining the crime is satisfied in all its parts by the testimony; that is, if the testimony makes out a crime as laid down by this rule.

You will have observed by your experience in this court at this term, and you will have observed, no doubt, many times before in the trial of these cases, that there is no two of them exactly alike. They are all determined upon some different principle. Not that the principles that apply to any state of the case are different; they are the same; what may be a ground, for example, of defense in one case will not be in another. For example, the case we last tried was a case where it was asserted that

the killing was done in self-defense; there was no issue at all over the killing; that was a conceded fact. The issue in the case is determined by some different proposition each time. There is an issue over the killing here by the defendant. That is the question in controversy, and the question as to whether or not there is any self-defense in it does not come into the case at all; we have nothing to do with that in this case.

Now, we will proceed to see what goes to make up this offense, and we will take it deliberately, and try and embrace every proposition as we go along and understand each of them. The charge is that it was done on a certain day. It is not necessary to show that it was done on that day. If it was done at any time prior to the day upon which the indictment was found (which was on the 7th day of February, last), that would be sufficient, because there is no limitation as to the crime of murder. You are aware that we tried a case at this term that was 20 years old. If it had been 100 years old it would have been just the same. The law does not recognize any limitation against the crime of murder, because it is a crime that so seriously affects the public welfare, and deprives, by murderous means, a citizen of life. The taking away of a member of society is regarded as the commission of the highest crime that can be committed, and the law considers it so important that a crime of that kind should be punished at any time when it is discovered; that it does not say that there is any degree of negligence attributable to the Government because it has not prosecuted within a given number of years.

413

Now a word as to the means used. The killing is charged to have been done with a gun. If it is shown to have been done in that way, or, to have been done with a pistol, that is responsive to that allegation, for in such a case it is done by kindred means. There is another fact existing in this case that you will note—and this is a case like many others that I will call your attention to in the course of the charge, where every element in the case is dependent upon circumstantial evidence; and it is a case that forcibly and strongly shows that kind of evidence is a powerful factor in the ascertainment of truth. It shows with great force how futile—and I was about to say nonsencical—is the position sometimes assumed, that if we can not find positive evidence of the commission of a crime like murder that we are to stop the wheels of justice—stand idly by, and let streams of blood flow past us, running from murderous wounds, inflicted by the vicious and the bad, the vile and the wicked. You will learn that this is not the law. You will learn, as you have already learned, that there is never any case where one element of the offense called intent is not always necessarily proved by circumstantial evidence, and if we are to stand as idle spectators to these scenes of violence and bloodshed, not having the courage or manhood in the conception of our great duties as citizens to sufficiently enforce the law, because either we, or somebody else who may tell us of it, can not stand by in every case and see one of these crimes in all of its bloody and horrible details perpetrated, then nobody is to be brought to justice. I say if that is the rule, when we conceive that every crime that involves intent, if that is an element that is necessary to be established, must always be proven by circumstances, then no crime can ever be ascertained. Whenever you come to a crime that has the element of intent, you must necessarily prove

414

that element of it by circumstances alone. If that is so you can punish no offense unless you rely upon that sort of evidence. Confusion exists in the minds of honest men from a misconception of what circumstantial evidence is. They do not understand it. They think it is some far off deduction—some unmethodical thing that is drawn out like a thread of silk, from no source, from no origin that is reasonable. But when we
415 conceive that it is the kind of evidence that we depend upon in our every day affairs, or a majority of them, in life-evidence, that if we disregard it we can not move to the right or left, or ever form any conclusion.

Now, let us take this charge apart and examine it. Let us take it up in detail, and only one proposition at a time, and see if we can arrive at a correct conclusion as to exactly what is required to make out the charge. If we do this we have a question of fact which is necessary for us to begin with to enable us to solve this case, and that is the death of David C. Steadman. That is the first thing to be found, necessarily, in the case. That must be shown, because if he is not dead that is an end to this controversy. You can not convict a man for the killing of another, unless that other was killed. This involves an inquiry into the question as to the remains—those which were found at the place described by the witnesses—necessarily, because if these remains are not the remains of David C. Steadman, then we can go no further toward a conclusion of guilt. We have in connection with that proposition the other one which must exist, and that is that he died by violence of the kind described in the indictment. When we have found these two things to exist we have gained so much that is necessary for us to gain to enable us to come to a correct conclusion. We stop right here and take up the evidence by its all-fours that bears upon the question of identity, to ascertain whether these remains were the remains of Steadman. If they were his remains, it is a physical fact that we may take as established that Steadman is dead, because we know that his remains can not be in that condition without it following as a necessary conclusion that he is dead. This requires us to
416 ascertain how we may identify these remains. This is a case like the case of Udderzook, and like hundreds and hundreds of others that occur in the administration of criminal justice in this country. It is a case where you can not look upon the face of the dead man, or look into it, and say that is the face of a certain party, because the face has been destroyed; it no longer exists. And right here the question becomes pertinent, how then are you to establish the identity of the party? How are you to ascertain that. You see a man alive that you are acquainted with, a man who is your friend, and whom you have met often. You can look into his face, and from the make of that face, from its form or appearance, and its very cast, made up of a number of things combined, you can swear to the identity of the person from that face, from this combination of things that produces a certain appearance, and this combination as it is illuminated by the light that comes through the windows of the soul—his expression, and the intelligence that exists in the human mind that beams out through the face. You can look in the face of a friend or an acquaintance, and you can name him as a man of a certain name that you know. When a man dies this illuminating power that is connected with the human mind, and that comes from the mind, disappears, and, necessarily,

the human face while it is preserved until it is decayed or destroyed, presents only the general outlines that it had when the party who possessed it was alive.

There is something about it in life that is gone forever, which is destroyed; and you will have a little more difficulty in recognizing the face of a dead man, although he may be an acquaintance, yet, as a rule,
417 you can generally recognize him by his face. But suppose his face is gone and the body is entirely destroyed? What then are you to do? If a man has been murdered, if the rights of society and its members have been trampled upon by a brutal assassination, are you to make no effort to discover that crime and punish the criminal because the identity of the remains or of the person, by the means I have named, can not be ascertained? Not at all. You can go to means that are extraneous to the body of the person. You can, in other words, fall back upon that evidence that is so often and so generally and usually relied upon, called circumstantial evidence, to ascertain that fact. Now, what is meant by circumstantial evidence? What is the fact to be proved in this proposition? Why, that these remains were the remains of David C. Steadman. If a man would come before you and say that he looked upon a dead body and knew it from its face, its form, and appearance that would be positive evidence, and, commonly speaking, it is called evidence of that character. It is an opinion, of course, but it is regarded as so close to the proposition necessary to be established as to be recognized as positive evidence. Circumstances are things standing around the main proposition to be proven. That is the definition. That is what circumstantial, or circumstances, comes from—circumstare—standing around; things that stand around the occurrence, the proposition to be proved. If you can get a number of them, why they are just as effective, if they are sufficient in their proving power, to satisfy beyond a reasonable doubt the minds of reasonable men, as though it was this other kind of evidence coming from a man who says he looked into the face of the dead man and by that means he recognized him.

418 Let me give you a most remarkable case, to show you how this may be done; it is a case that, perhaps, you are not generally familiar with; it is reported in the law books, and it occurred in connection with a man's journey to this State a good many years ago; it is called the Merryweather case, sometimes the Peterson case. A man by the name of Merryweather, from Mississippi, coming over to this State a good many years ago, when the means of travel were not as good as now. He was riding on horseback, and had a considerable sum of money with him. He made his journey, travelling about the State in different parts of it, visiting friends and old acquaintances, and finally he started home. Over here in Tennessee, when he was going back on his way home, he was riding along one evening and overtook a young man who seemed to be sick; he got into a conversation with him, and told the young man that he was going to stop at the next house, and advised him to do so also, remarking to him that he seemed to be in bad health. Accordingly in the evening they stopped at the next house along the road, which was a farmer's house; he told the young man if he would wait until the next morning he would go with him towards Jackson, the capitol. They remained over night and took breakfast there; in the morning they started off together, and that was the last seen of Merryweather alive. Peterson was the last

man seen with him. He did not return home, and some months afterwards his brother, having become anxious about him, began to institute inquiry about him, and it was discovered in some few months afterwards that a man south of Jackson, Mississippi, was using the horse that belonged to Merryweather, the horse he went away on. This gave a clew, and he was approached on the subject, and it was ascertained who
419 he bought the horse from. This they found to be the young man that was last seen with him, and they arrested him.

Of course he denied all knowledge of the disappearance of the man. He had been to Tennessee, and they were taking him back to have a preliminary examination. They hadn't yet found the body of Merryweather, and when they were going back the brother of Merryweather rode this horse, a fine gray animal. They got up to where his body was afterwards found, in the road opposite where it was found. When they reached that place the horse refused to go; he would not take a step farther. They tried giving him the spur, and whipping him up, and still he wouldn't go. Somebody advised the man to give the horse the rein, let him run loose. He did so, and broke off through the timber and went off one-eighth of a mile from the road, where they found, lying at the roots of an oak tree, the dead body, entirely eaten up by the hogs. Every vestige of whose body that was, as far as its appearance was concerned, was destroyed, by the obliteration of all means of identity. But the horse went there and neighed, and pawed, and took on in that way. These are facts that are established so thoroughly as to be reported in all the law books of the country. The question now came up as to the identity of that body. That body of Merryweather had some clothing around it, but it was so far decayed that they could not even swear to the clothing, and, of course, they could not swear to the body from its appearance. There was nothing but bones there. They found a piece of the vest, and in that vest were some needles that were wrapped up in a piece of paper of a certain color,
420 and the under side of the vest had been patched, mended. There were stitches made in a peculiar way, and with a peculiar thread. The wife of the man's brother—his sister-in-law—swore positively to that package of needles, and swore that the stitches were put in there with her own hand. She gave reasons for it, and the jury were satisfied it was his body, and they so found, and the man was convicted of the murder. These were the only circumstances that they relied upon in that case to show beyond a reasonable doubt the identity of the body of Merryweather. Now, these were circumstances extraneous of the body—outside of it—and the law says they may be depended upon, they may be relied upon, for the purpose of producing a state of case where it may be stated truthfully that the body has been identified. It is necessary to be done.

Now, let us see what the law says upon that subject. Here is what Mr. Burril, an eminent writer upon the subject of circumstantial evidence, says:

"Supposing a dead body, or its remains, to have been discovered, the next step in the proof of a corpus delicti is the identification of such body or remains as those of the person charged to have been slain.

Where the body is found shortly after the commission of the crime, and the face has not been disfigured by the violence employed, or by accident, or in the natural course of decay, the identification is made in the

form of direct and positive proof of the fact by those to whom the deceased is known; but where the features have been destroyed the body may be identified by circumstances, as by the dress, articles found on the person, and by natural marks upon the person. In Colt's case,
421 where a considerable portion of the face had been beaten in by blows, and the progress of decay had otherwise rendered direct recognition impossible, the body was identified in this way. In McCann's case, where the face of the deceased had been eaten away by hogs, identification was effected in a similar manner. Even where nothing but the skeleton has been found, it may sometimes be identified by peculiar marks and by objects discovered near it. In the case of Rex. V. Clews (4 Carrington & Payne, 221), the body of a man after the lapse of 23 years was identified by his widow from some peculiarity about his teeth, and by a carpenter's rule, and a pair of shoes found with the remains, and also identified. But in examining skeletons, great attention should be paid to their anatomical characteristics, upon which the important facts of the age and sex of the person depend, as these may be decisive of the whole case in favor of the accused.

Where the body has been purposely mutilated, and especially where it has been dismembered with a view to its destruction by fire or otherwise, its identification becomes a matter of greater difficulty, the head being usually destroyed first, for the very purpose of preventing recognition. But it occasionally happens that even the agency of fire, which is generally selected as the readiest and most effectual means of destruction, proves inadequate to the purpose contemplated. In Webster's case, the head of the deceased had been placed in a furnace and exposed to a strong heat for a considerable time. But some blocks of mineral teeth resisted the action of the fire so effectually, that they were identified by a dentist as parts of a set of artificial teeth which had been made for the deceased, and which
422 the latter wore at the time he disappeared. Some other portions of the body, which had not been subjected to the action of fire, were also identified by peculiar appearances. A case is mentioned by Mr. Wills in which the remains of a female consisting merely of the trunk of the body, from which the other parts had been cut, were identified by a curious train of circumstantial evidence embracing several facts of conduct on the part of the prisoner."

Mr. Wills, on circumstantial evidence, further says:

"It is not necessary that the remains should be identified by direct and positive evidence where such proof is impracticable, and especially if it has been rendered so by the action of the party accused. A man was convicted of the murder of a creditor who had called to obtain payment of a debt——"

That was the case in the case of the killing of Dr. Parkman by Websester, but it is not the case he alludes to here; it is a case very similar.

"——and whose body he cut into pieces, and attempted to dispose of by burning. The effluvium and other circumstances alarmed the neighbors, and a portion of the body remained unconsumed, sufficient to prove that it was that of a male adult, and various articles which had belonged to the deceased were found on the person of the prisoner, who was apprehended putting off from the Black Rock at Liverpool, after having ineffectually endeavored to elude justice by drowning himself. The remains of a man

which had lain undiscovered upwards of 23 years were identified by his surviving widow from peculiarities in the teeth and skull, and from a
423 carpenter's rule found with them. The identification of human remains has been facilitated by the preservation of the head and other parts in spirits; by the anti-putrescent action of the substances used to destroy life; by the similarity of the undigested remains of food found in the stomach with the food which it has been known that the party has in them; by means of clothing, or other articles of the deceased, traced to the possession of the prisoner, and unexplained by any evidence that he became innocently possessed of them; by means of artificial teeth, and by numerous other mechanical coincidences."

Now, it may be well to note right here the language of Chief Justice Shaw, who presided upon the trial of Professor Webster for the killing of Doctor Parkman, when he was put in the laboratory of the furnace and burned up. Chief Justice Shaw in that case said:

"This leads to the more direct and material question, whether these were, in fact, the remains of Dr. Parkman.

There was evidence tending to show that, when these parts were brought together and laid in juxtaposition, measuring those which were found, and estimating the size of those which were missing, they correspond in height and figure with those of Dr. Parkman. The result of this analysis and measurement are given in the testimony of the medical witnesses, especially of Dr. Wyman, and the report which, without objection, was submitted to you. Mr. Shaw, a relative of Dr. Parkman, who had known him long and intimately, examined these remains, and says they very much resemble those of Dr. Parkman. They correspond in height and size, and
424 in the color of the hair on the breast and leg, and there was nothing dissimilar about them from what he knew of Dr. Parkman, and he took charge of them as his remains.

Here is one of those cases in which the rules of evidence apply, to which I call your attention in speaking of circumstantial evidence. If this testimony had been alone relied on as proof of identity, though tending to create a strong probability, it would have left that fact still doubtful, because parts of the body were wanting, such as the head, including the features and countenance, the parts by which the identity of a person is usually established. But, certainly this is not the only mode in which identity may be proved; and in this case, had there been marks upon the portions of the body found, and they could have been shown to be natural, or artificial marks, existing upon the body of Dr. Parkman, they would have tended to make out that point."

And the judge says if that testimony had been relied upon alone, it would hardly have been sufficient.

"Then the evidence arising from the teeth is relied on; and if the proof derived from this source is of a more conclusive kind to establish the identity of those remains with those of Dr. Parkman, then the fact that the remains corresponded in height, figure, color, and general appearance with the person of Dr. Parkman, though not specific and direct enough of itself to prove identity, yet being consistent with and not repugnant to it, would, to that extent, tend to make out that point, and corroborate the identification.

You are next called to consider the proof arising from the remains of a set of artificial teeth, found in the furnace, as bearing upon this same matter of identity."

425 In alluding to the case I have already named, known as the Peterson case, and which contained this kind of evidence, it will illustrate how identity may be proven by circumstances. The clothes were so much decayed as to make their recognition almost impossible. The wife of the deceased's brother, however, was able to identify a small fragment of his vest, and a little package of needles she placed in his pocket before he left her. He lived with his brother, and she attended to his wants of that kind, and she was able to identify them.

Mr. Wills, on circumstantial evidence, further says:

"Identification is often satisfactorily inferred from the correspondence of fragments of garments, or of written or printed papers, or of other articles belonging to or found in the possession of parties charged with crime, with other portions or fragments discovered at or near the scene of crime, or otherwise related to the corpus delicti, or by means of wounds or marks inflicted upon the person of the offender."

Now, this shows that when you can not have evidence such as would come to you from a witness who stated that he knew the man by his face, by his appearance, when you have not that sort of evidence that is denominated positive testimony because of its nearness to the main proposition to be established, then you can rely upon these extraneous circumstances, such as the clothing or articles found about the person, as letters, or as pieces of paper having the name of the party upon them whose body it is alleged to be. If these evidences when all taken together are sufficient to satisfy your minds as reasonable men of this proposition, which
426 is, that the remains correspond with, and were the remains of, David C. Steadman, then you may regard that position as being proven and you may take into consideration that sort of evidence to establish it, just as you would if you were to find a dead body out here, and were seeking to ascertain whose body it was. You will have to employ all these usual, intelligent means that men of intelligence employ to enable them to arrive at a conclusion that is sensible, that is reliable, and that is certain—a conclusion that they would believe it would do to depend upon. That is exactly what you are authorized to do here. You do not go out there, of course, yourselves, and look around there and pick up these pieces of paper, and these articles of clothing, or these spurs (sworn to be the spurs of the deceased Steadman), or this pair of boots, having that peculiar make as an evidence of their identity, or the hat, or any of these things. You did not gather them up, did you? For they were all produced before you after they had been gathered up by intelligent witnesses, who had proceeded in an intelligent manner to do these things that you would have done if you had been there. You may take all these things into consideration to enable you to ascertain whether this proposition has been established beyond a reasonable doubt. If it is, then we have proceeded sufficiently far to say that he is dead. But we have not yet established the other proposition that is necessary to be established.

Now, a man may die from natural causes. We know that to be true. The fact of the death of a man does not prove that he was killed by
427 violence administered in such a way as that it was criminal; it does not show that. Therefore we are to take a step further in the in-

vestigation to ascertain that necessary proposition, viz, Did he die by violence, and of the kind named in the indictment? Sometimes in the investigation of these cases I think that we have evidence, and strong evidence, of special providential interference in the affairs of men, and I have seen it so often in this court and in other courts that it seems to be providential. In the discharge of the great and solemn and responsible duty that rests upon you of upholding the law of your great Government and of administering protection to the 65 or 70 millions of people who are entitled to it, when you are occupying that position you could not proceed a step further unless there was given to you in this identical and specific case means by which you could ascertain the existence of this proposition, that is, whether or not he died by violence of the kind named in the indictment; your duties would be at an end and you would necessarily have to stop right there. The greater part of that skull had disappeared; it was gone; whether it was carried off by some persons or carried off by the hogs and shattered and broken by them, is a matter we can not tell anything about. But it was gone; the body of the dead man was trampled in the mud there after it had been torn into pieces. But here you are confronted with the fact that you must find that he died by violence of the character named in this indictment, and I say it seems almost providential that the identical piece of skull that would establish that fact, or at least would afford that reasonable degree of certainty towards establishing it, that conscientious and reliable and intelligent men might depend
428 upon, was on the ground, was discovered, was produced before you that you could look at it, and have before you the evidence itself going to show whether or not he was killed by being shot to death with a gun. Why not that piece carried off? Why not it trampled in the mud? Why not the hogs carry it off into the thicket? Why not take that instead of the other pieces? That seems to be there for the purpose of unfolding this crime; for the purpose of showing the existence of this proposition; for the satisfaction of those who administer the law, and those who may feel a deep interest because related to the deceased by ties of blood, as to the means which produced that result. Now, you have a piece of human skull; in it there is a hole. You have the right to look at the hole, and from your common intelligence, from your common observation, you have a right to pass upon the question as to whether this is a bullet hole. If it is a bullet hole you have a fact that in the ordinary occurrences of mankind leads you to the conclusion that that was what produced the death of the deceased. You have a right to take these things into consideration to ascertain that. You have a right to consider as to whether or not that is proof sufficient in your minds to satisfy you of that proposition beyond a reasonable doubt. If so it is established, and you may put that aside, together with the other one that is necessary to be found.

Now, you have found that he is dead; that he died by the means named in the indictment. The next inquiry you are to make is whether these means were criminally used to produce that result. Was this violence inflicted criminally? Was the killing of David C. Steadman a crime; and, if so, what crime was it?

Now, we are confronted by another proposition. You see we
429 are going through this step by step. We do not take it all at once and jumble it altogether as a polygot proposition; so that I

would say to you, speaking in the language of the law, take this statement of it and go and make the best of it. That would not be proper. My mission is to give you an intelligent exposition of the law as far as possible and in as simple a way as I can in order that you may understand it. In order to do that I give it to you in detail; I tell you exactly what propositions, one after the other, are necessary to be found. We have now come to the one where it is necessary for us to inquire whether that killing was a crime. Here we are confronted again by this other proposition that is also often asserted: Well, who saw it done? Therefore, can you show that it is a crime? Why, as a matter of course, every element in the case, everything that goes to make it up, everything that is found in this case, may be established either by positive proof—that is, by the evidence of some eye witness to the transaction—or by the things that are left around the occurrence. We all know that no act can transpire in this world without leaving some evidence of its having transpired and of the way it transpired behind it. A man can not do an act in this world, if that act is investigated as it ought to be, that mankind will not be able to characterize the act and often tell who did it and the way it was done by the surrounding things that are left there; by the execution of the act, by the way it is done—by all of these things. But we can not stop here by saying, Was this a crime; and if so, what crime was it? Because we have now come to that part of the case where we must go to the law to see how the law defines the crime, the definition em-
130 bracing these two propositions I have given you, viz, the death of Steadman and whether or not he died by violence of the kind named in the indictment. It is charged in the indictment that the crime committed is murder. How do we know that? How do we know when a case is murder? Why, we go to the law and get a definition of that crime. Then we take the facts and see whether they make out such a case as the law contemplates. How does the law define this crime of murder? It says that whenever we take a human life wilfully and with malice aforethought we are guilty of this high crime; we are guilty of violating a right that is regarded as a public right—because the right to life is a public right—a right of such importance that it belongs to the whole public. The right of a member of society to exist is a right that is to be preserved, first for the interest of the public, for the person who possesses that life is to assist in bearing the burdens and performing the duties of life that depend upon society and that must be borne by society. Society in that regard is weakened by the destruction of one of its members. Again, the life belongs especially to the individual for his enjoyment and that he may discharge those social responsibilities that belong to that part of society most intimately connected with him, arising from family and the existence of family, from wife, from children, from relatives, from friends. That social duty belongs to them and is to be discharged by this individual whose life is destroyed. Then there are certain inherent reasons, the greatest of all being that life is sacred to the man who owns it and it is not to be taken away except he forfeits it by the destruction of the life of another. When he does that under the law
131 of self-defense, under the law of necessity, it is necessary, in our condition of social advancement, that there should be held before the eyes of men so wickedly disposed as to destroy a human life the fact

that they must bear the dreadful consequences in the shape of the forfeiture of their own lives following the commission of an act of that kind, the execution of the mandate of the Most High when he said that "Whoso sheddeth man's blood by man shall his blood be shed," for the protection of society, for the protection of the innocent, for the preservation of society, and the defense of its members. Now, to do that, to understand these things, to recognize fully the fact that this is a public offense, an offense that is struck at the very existence, the very life of society, we must go to the law to understand what it is and what goes to make it up. If I take a human life wilfully I have taken one step toward the commission of a murder. If I take it with malice aforethought, in addition to its being done wilfully—and if I take it with malice aforethought I necessarily do take it wilfully, because that must exist and goes to make up malice aforethought in many cases—it may make it up alone or it may make it up in part—I commit the crime of murder. But the law, in order to secure this great purpose of protecting this right that belongs to each and every individual member of society, recognizes that to protect it effectually that trial, conviction, and punishment must, certainly follow in every case where the law has been violated; and in every case, although there may be a trial, where it has not been violated you must look to it that the innocent shall not suffer.

432 In order to secure that the law defines these terms that enter into the crime; it says that whoever does an act wilfully does something that is recognized as being intentional because wilful; in this connection means intentional and not accidental. Now, I define an accident that you may by contrast understand what wilful means.

The committing of an act accidentally, under the law, is the committing of an act that has no will power behind it, that has no will power prompted by a desire to produce the consequences that may flow from the act. For example, if a man uses the degree of care that the law says he shall use to prevent the occurence, and it does occur notwithstanding, that is an accident. A man is handling a gun or pistol and he uses that high degree of care that the law exacts of him to prevent injury to another, yet the injury ensues from some inevitable or unaccountable cause, why that is an accident, and he can not be held responsible for it. But to determine whether it is an accident or not the law does not stop to minutely inquire into the condition of his mind, to ascertain whether there was a specific purpose to do that act, or whether it was done from general malevolence or gross carelessness. There are but two states of case; one is the antipodes of the other—one is directly the opposite of the other. One is an accident, and the opposite of it is wilfully done. If a man, for example, is handling a gun in this room where there are a good many people, and he does it in a way that he ought not to do it, in a way he could prevent the results that were dangerous and deadly in their effects if he had tried to, but didn't do it, and somebody is killed as a

433 consequence, the only question in that sort of a case would be whether it was murder or manslaughter, depending upon the degree of carelessness exercised. That is what is meant by a thing intentionally and not accidentally done. The law exacts of every citizen that proportionate degree of care necessary to be exercised to prevent a deadly and dangerous result, and whenever he does not exercise it he is guilty of a crime. Now, wilfully, or a state of wilfullness, grows out of either one of

two propositions. If there is a condition where the party formed the motive, formed a specific design to accomplish a result, such as robbery or plunder, to get property, and he takes a human life to remove that which stands between him and the possession of the property, that is a state of case where there is a specific design growing out of cupidity, growing out of a desire for gain dishonestly obtained—a desire to get rid of the cause that stands between him and the consummation of that desire. Wherever a human life is taken for that cause, then you find the existence of this condition of wilfullness because of a specific intent, because of a peculiar condition of the mind of the party, because of the very motive which prompted the doing of that act. You will also learn presently that you will find this other state of case which makes up the other element of the crime known as malice aforethought from the same set of facts, from the same mental condition. But if this is absent, if there is no desire of that kind, it is not necessary the desire of the mind should be proven in order to make a crime. In other words, as you will learn presently, it is not necessary that a motive should
434 be shown, and especially a motive that is adequate, in order to make out the crime of murder. Whenever it is shown it becomes an evidentiary fact in the case that with a greater degree of certainty establishes the necessary elements of the crime, and especially the element known as malice aforethought. Then, when it does not exist, and when it is not proven to exist, but whenever you find a state of case where a human life has been taken either from a special desire, or from general malevolence, or gross recklessness, you find that the first element of the crime of murder exists, known as that the act was done intentionally and not accidentally; and, second, that the result was wilful, as there is such a known connection between the acts—such as shooting at another and the result called death—that whenever a party intentionally does the act he intentionally produces the result. For instance, the law does not permit a man to go out here and shoot through a man's skull and come up here and say, "I didn't intend to kill him; I didn't intend to do that." That is too much like a case disposed of over here in Crawford County sometime ago, when a man was acquitted by the jury (misconceiving their duty), when he swore on the stand that he didn't intend to kill the man when he shot at him, but shot to cut off a lock of his hair above his ear, he stating that he did not intend to kill him at the time, but simply wanted to frighten him out of the country. The law regards that sort of plea as simple nonsense. Whenever a man does an act that naturally, reasonably, and probably will produce a certain consequence he intends that consequence, and
he can not deny it. There is what is called a legal estoppel of that,
435 and the law does not permit him to deny it. The material inquiry upon this element of the crime is to find whether or not, from the circumstances in this case, it is shown beyond a reasonable doubt that the man was wilfully and intentionally shot at, and as a consequence he died from the effect of that shot, and if so you have the first proposition that makes the crime of murder. The second proposition is that it was done with malice aforethought.

How is malice aforethought defined? What is meant by that? Why, the law says, in a general way, that it means the doing of an act which produces death in such a way as to show that the person who did it was a

person possessing a heart void of social duty, and a mind fatally bent upon mischief. Now, this is specific when we understand what is meant by it, yet in its general form it is not properly comprehended, I apprehend, and needs some further explanation. You might take the first proposition that the law recognizes as correct, viz: That in every case where a man wilfully takes human life he is guilty of murder if there is no evidence in the case which shows that he had a right to take that life, or that which shows that he had a right to ask that the law would mitigate his offense because of what the man was doing who was killed at the time he was killed, making it such a case where manslaughter could exist because of the wrongful act of the party who was killed. You see you can not kill a man for every wrongful act. You see a man stealing a horse out there, you can not kill him for that, because you can not weigh the value of a horse against a human life. But suppose in the heat of the excitement of a state of case produced by that sort of conduct you would kill him then and there because he was stealing, and while not seeking to arrest him,
436 the law would mitigate your act and say it was simply manslaughter, because of the conduct of the party. Now, that is what is meant by mitigating the offense, and reducing the *garde* of it. But where you have the bald, naked facts which show he took a human life and there is nothing that shows that he who took it had a right to take it under the law of self defense, nor was there any act done by the party slain at the time he was slain that would give the party the right to ask for a mitigation of the offense, you have then the exact condition of things that, when the proof shows it was wilfully done, shows that it was done with malice aforethought. Now, let us see whether that is true or not; let us see whether or not that is correct under the law.

It very often happens that the very proof which shows the wilful doing of an act shows that it was done with malice aforethought. You see wherever we can shorten these duties by giving the principles of law, and by being directed by them in such a way as to take one proposition as established by the establishment of another proposition, why, by understanding the same proof which establishes the one makes our work that much easier when we are groping on our way wondering in our minds, now what does that mean? What is meant by that expression? If we can have it clearly defined, if we can be satisfactorily informed of how we can find its existence, it becomes easy; it is like learning a child his A B C's: when he gets them in his head they are there forever, and he understands them, and he can make an application of every syllable and make a word, and he can learn to read after a while. So it is in this case. When we get the principles clearly formulated satisfactorily in our minds, when we
437 understand them satisfactorily, why the application of them, if we have a recollection of the evidence, is easy, it becomes easy, and that is the duty of the court, to make your work as easy as possible, to give you all the aid possible that it is permitted and authorized and allowed to do by the law in order that you may make a correct solution, and that you may do it without having doubts upon any of these points of that character that would leave your minds in a state where they are surrounded by uncertainty.

Now, malice is implied in every case of intentional homicide. I told you that the law said intentional homicide was wilful homicide, and if it

is implied in every case of wilful homicide, why then you have a proposition that I have already given you; that is to say, when once it is established that a person is intentionally killed the law implies that malice existed in the party who caused the death. Now, that implication, of course, is not conclusive; it may be rebutted by evidence. For example, I may be brought up here for shooting a man, and the proof shows I shot him, of course, when it shows I shot him by pointing a pistol at him; if there is nothing else shown why then it shows I did it wilfully. If it is unexplained the law, from that state of proof, implies that I did it wilfully. Now, stop the case right at that point, no other evidence being offered, and that is a case where murder exists; but I may, if I desire, explain that killing in such a way as to show that I had a right to do it, or that it was mitigated, but if there is no explanation of that crime offered the law attaches to that state of facts an inference, and says
438 to the jury from that state of facts they are to draw an inference of fact—draw a conclusion based upon the truth of this proposition established, that the killing was murder if there are no circumstances of excuse or palliation offered.

"A man can not strike another violently with a bar of iron without inflicting great bodily pain; it, therefore, he does thus strike another, the law presumes that he intended thus to inflict pain. The usual effect of a leaden ball, fired from a loaded pistol of the common size, at the distance of a few feet only, striking the head or back of a person, is to kill such person; the law therefore presumes that every one who thus fires a loaded pistol within a few feet of the object intends to kill; it, therefore, implies malice in him."

It says, in other words, from that state of facts that malice existed.

"Malice aforethought is the grand criterion which distinguishes murder from other homicides, and it is not so properly spite or malevolence to the deceased in particular as any evil design in general; the dictate of a wicked, depraved, and malignant heart; a purpose to do a wicked act; and it may be either expressed or implied in law. Express malice is when one with a sedate, deliberate mind, and formed design, doth kill another, which formed design is evidenced by external circumstances, discovering that inward intention, as lying in wait, antecedent menaces, or former grudges, and concerted schemes to do him some bodily harm. So, in many cases when no malice is expressed, the law will imply it, as when a man wilfully poisons another; in such a deliberate act the law presumes malice,
439 though no particular enmity can be proved. Without any, or without a considerable provocation, the law implies malice, for no person, except of abandoned heart, would be guilty of such an act upon a slight or upon no apparent cause."

Now a word or two from a case upon the subject such as we are investigating now. I read this especially for the purpose of impressing upon you the methods you may adopt, and the kind of evidence you may rely upon to find a state of case where malice aforethought exists. "Malice is an intent to do injury to another, or a design formed to do mischief to another;" a formed design, for example, to do mischief of such a kind as that death results from it. Whenever a man, for example, forms a design to shoot at another, no matter what the purpose was, whether it was for gain, a desire to satisfy this cupidity we possess, or whether it was

from some other motive—a desire for revenge—whenever he forms a design to shoot at another, and he executes that design and that other is killed, that has malice aforethought in it, provided there is no right that he had to shoot at that other existing, and that other was not doing anything at the time that would give him the right to ask for a mitigation of the offense. Then, from the formed design to do mischief of that kind, you have malice aforethought; that, then, implies premeditation. Whatever shows thought of beforehand, provided that it is executed, shows malice aforethought—anything which goes to show that, for example, the selection and use of a deadly weapon. A man has a gun or pistol in his hand, and he is carrying it upon his shoulder or in his belt,
440 and he selects that weapon by drawing it from the position where it is, and presents it at another so that it can be used in his hand when directed by an intelligent party, with a deadly result, why the law gives you a case where there is malice aforethought, unless there is some explanation of that act. From the act alone you have evidence which shows that the act was wilfully done, and from that alone you have the doing of a wilful act; you have that which evidences premeditation, which shows thought of beforehand, which shows a contemplated purpose to do deadly mischief.

"Malice means an intention to do bodily harm; a formed design to do mischief. It has also been defined as a deliberate intent to kill. It does not necessarily import any especial malevolence towards the individual slain, but also includes the case of a generally depraved, wicked, and malicious spirit, a heart regardless of social duty, and deliberately bent on mischief. It imports premeditation."

That is, thought of beforehand.

"Therefore, there must logically be a period of prior consideration, but as to the duration of that period no limit can be arbitrarily assigned. And it will vary, as the minds and temperaments of men and as do the circumstances in which they are placed. The human mind acts at times with marvelous rapidity. Men have sometimes seen the events of a lifetime pass in a few minutes before their mental vision."

He gives an illustration of that. I will not take up the time to read it.

When a man was drowning, and in the time that elapsed between
441 the time he went down and came up twice, he says that everything that occurred in his whole life was panoramaed before him. He saw it all reproduced; every bad and every good act of his life—everything; even the most minute details greatly affected him that he conceived to be bad when he was a boy; all things rushed back on him in an instant of time, showing, when under a degree of excitment and when there is sufficient inducement to prompt it, the mind acts with most marvelous rapidity, acts rapidly; in fact, it ordinarily and generally does do that, and we do not conceive its action. This action is so usual with us that it is like the air we breathe and the water we drink, both so necessary to our existence, yet so usual that we do not stop to note even the existence of the air we inhale and exhale, or the water that refreshes us, and in like manner the human mind is so rapid in its action and its action is so necessary to our movements in life that we do not stop to note the fact. We take a step forward; the mind commands it, yet we do not stop and contemplate before we step. The mind governs everything we do. We

could not move backward or forward unless our limbs were commanded to move by the mind, yet its action is of that delicate character, it is so imperceptible in its movements, except as you may see it manifested by external conduct, that we do not note what it is doing.

"Men have sometimes seen the events of a lifetime pass in a few minutes before their mental vision. Thought is sometimes referred to as the very symbol of swiftness. There is no time so short but that within it the human mind can form a deliberate purpose to do an act; and if
442 the intent to do mischief to another is thus formed as a deliberate intent, though after no matter how short a period of reflection, it none the less is malice."

As an eminent text writer has put it, there is no case of malicious homicide in which malice is not inferred from attendant circumstances in the case, in which it is demonstrated as expressed; consequently, in a case where it is sufficiently proven by circumstantial evidence, it is a proposition that must be recognized as true. If you can not tell what the mind was doing and have it demonstrated, by an application of some one of the five senses to that mind itself, the way it is acting, how can you have positive evidence of its action. You can not do it. You can not look at the mind, and from its movements determine what it is doing, what thought it has in contemplation, what thought it is about to generate; you can not do that from an application of your eyesight, by your touch, by your taste, by your smell, or by your hearing; therefore, by the application of no one of the five senses can you tell what it is doing, what purpose exists there. Then what are you to do when called upon to solve the proposition as to what the design of the mind was? Are you to stand still and report by your verdict, why, we can not do anything with this case because it is impossible to find that fact? That would be foolishness. Now, the law goes to what men usually do, and what rule they usually adopt, and it formulates a rule from that, and it says that from the action of the party, from the conduct of the party, from the state of case that is presented when the evidence shows that a man must have presented a gun or pistol at another, and fired the missile of death into the vital parts of his body—from that, considering that the law binds him to have intended that
443 which he has done, you have an intentional act proven by the circumstances demonstrated by that sort of evidence that always must be relied on to prove intent, and it never can be established without resorting to it; you have by some of the testimony a state of case which shows malice aforethought when the act is unexplained.'

"We have no power to ascertain the certain condition of a man's heart; the best we can do is to infer his intent more or less satisfactorily from his acts. Now, a person is presumed to intend what he does. A man who performs an act which he knows will produce a particular result is, from our common experience, presumed to have anticipated that result, and to have intended it. Therefore we have a right to say, and the law says, that when a homicide is committed by weapons indicating design, then it is not necessary to prove that such design existed at any definite period before the fatal blow."

Take this case here. Have you got any evidence indicating it was committed by a weapon? If you have and that evidence is sufficient to satisfy your minds beyond a reasonable doubt as reasonable men, as men of

observation in life, as men familiar with the appearance of wounds and able to deduce a sensible and rational conclusion from the hole as to whether it was made by a missile of death; if from this evidence you are able to draw a conclusion that the death of Steadman (if it was Steadman) was produced intentionally, and there is no explanation in the case as to how or why that death was produced, and if you have evidence which shows that the killing was wilfully done, you have evidence which
444 shows that it was premeditatedly done; that it was, in other words, thought of beforehand, as evidenced by the deliberate selection and use of the deadly weapon which produced that result, and you consequently have a state of case that is murder, as there is no evidence in this case showing that Steadman at the time he was killed was doing that which would give the party who killed him the right to take his life, or that he was doing that at the time he was killed which would be so provocative in its character as that his killing was not of the highest grade of crime. There is an entire absence of any evidence bearing upon either one of these propositions. Then, from the evidence in the case going to show the use of a deadly weapon, and consequently going to show the deliberate selection and use of such weapon, and, therefore, to prove a state of wilfulness and a condition of mind that terminated in an intentional killing, you have this condition, which the law says makes a killing with malice aforethought, the doing of a wrongful act without just cause, the execution of a deed in the absence of legal provocation, which resulted in death. That is what is meant by malice aforethought. That is how you may find it proven.

Now, the question arises, from the circumstances in this case, from the evidence that has gone to you in this case, have you that which satisfies your minds that the man was killed by the deliberate and intentional use of a deadly weapon, and that he was killed with a spirit or condition of mind which shows that it was a premeditated killing? In such a case it matters not what the motive was. You necessarily must first find that the first general proposition in this case is established, known as the corpus delicti, the fact that Steadman is dead, and that he died by
445 violence of the kind named in the indictment, and that the violence was criminal violence of a character to be denominated as the crime of murder. That is the first general proposition to be established; if it is not established there can be no crime. The next one is whether or not this defendant is the party who committed that crime. Both are essentials to be established beyond reasonable doubt before you can find a verdict of guilty against the defendant. If they are established in that way your duty to find such verdict is clear and plain. Then the question is asked right here: Is the defendant the party who took the life of Steadman? To determine that it is your duty to look at all the facts and circumstances of this case. First you are to look at all the facts and circumstances of the case and see whether the defendant had any motive for the killing or not; not that motive is necessary to prove the crime, because it is frequently so hidden in the mind and breast of the party who commits the crime that we are unable to drag it to the light of day, but your duty is to see whether or not there was a motive which produced that result or what was the motive which prompted the mind to act so monstrously wicked as to take a human

life. If we are to find that the motive was adequate to that crime, why, of course, we never could find any crime, because there is no motive adequate to the crime of wilful and wicked murder. Why, there ought not to be any motive that is adequate in the mind of any man from his standpoint of self-interest alone, because, when he commits that, what is there in this world that is in proportion to the wickedness of that act or that can repay him for it after he has committed it, if you please, throwing the
446 moral part of it out of consideration? Nothing under Heaven. It is not necessary that we should find the existence of motive. If we do find it, it simply becomes that much more evidence in the case. If we find the acts to be done by a particular party, and we find them to be done under such circumstances as to show that they were wilful and done with premeditation, that there was a formed design to do an act to produce a result, why, it matters not if there is no motive existing or that can be found. There always is a motive. You can not always find it. We will now read from the charge of a judge in a case tried in New York a few years ago where he speaks of this question of motive:

"I speak speak first of motive. No man commits a crime without some motive leading him to do it. That motive may seem to be strong or weak. You are not to inquire whether the motive is one that ordinarily would lead to the commission of a crime charged. It is difficult for a mind that is fortified by the consciousness of its own rectitude to conceive of an adequate motive for any crime."

Why would any man intentionally violate any law when that violation only brings to him suffering and misery and direful consequences? If a man pursues a life that is honest and upright, and when he recognizes all the things required by the golden rule to be recognized concerning his relation to his fellows, and secures greater happiness by that course of life than by the converse of it, why should he pursue the converse of it? Why, if he is but rational upon these things, if he would but reason from a proper standpoint, the great study of his life would be how to keep upon that line of duty to others that he might secure the greatest human enjoyment out
447 of the performance of these obligations that rest upon him. Yet men disregard them; they become criminal; they trample upon this law, and because they do it, for your sake, for your safety, as well as the safety of your fellowmen, the law's penalties have to be paid, the forfeit has to be exacted for all those who trample upon the rights of others. We find it to be true that men by an upright course, by an honest course, by a conscientious regard of every consideration of his life, secures more happiness to himself than he would by an opposite course. He disregards that, and in the light of his own happiness and his own self-interest he becomes a violater of the law. Therefore, we are never to look for an adequate motive, because we can not find it for the commission of any crime. In the language of this law,

"No motive will lead the entirely just man to the commission of any crime."

It is no more a crime to take a human life when you are doing it to defend yourself than it is to take a human life by the mandate of the law to defend society—not a bit more. You may, however, properly inquire what motives do lead men to the commission of a crime, often leading to the crime of murder.

"You could not be moved to take the life of your fellow man except in the just defense of your own lives and rights, or the just defense of the rights of those whom it is your duty to defend. But just defense is no crime."

Nothing truer than that. Again upon this subject of motive and its adequacy, let us read a little further what Mr. Wharton, the most
448 eminent American criminal law writer who has existed in this country, in my judgment, what he says upon this subject:

"It is sometimes argued is it likely that one man should kill another for so small an article."

You, no doubt, get tired of hearing these things so often; but you must remember that this case is entitled to its own law to the fullest extent. You can not determine this case by the law that I may have given you in some other case. Your minds may more readily grasp the legal propositions in this case because I have repeated them often in other cases, but you must determine this case upon its own law, and it is the duty of the court to repeat that law to you, and if it did not it would be short of its duty, because if this cause should be reviewed by a higher court, it could not take some other law given in some other case and take it as the law in this case; it will look at the law given here by the court in this trial to see whether it was rightfully given or not.

"Is it likely that one man should kill another for so small an article? Are we not to infer when there is a homicide which is followed by the stealing of a mere trifle that the homicide was the result of a sudden passion, rather than lucri causa? Or for a mere prejudice or spite, is it likely that one man will assassinate another, and thus expose himself to the gallows? No doubt when a tender mother kills a child, or a friend kills a friend, and nothing more than the fact of killing is proved, we may be led to infer misadventure, or insanity, from the motivelessness of the act."

Again:

"We have no right to make such inference because the motive
449 is disproportionate. We are all of us apt to act on very inadequate motives; and the history of crime shows that crimes are generally committed from motives comparatively trivial. A man unaccustomed to control his passions and unregulated by a religious or moral sense, exaggerates an affront or nourishes a suspicion, until he determines that only the blood of the supposed offender can relieve the pang.

So also for the smallest plunder murders have been deliberately executed. We have an illustration of this in the trial of Muller in England, in 1873, for the murder of Briggs. Briggs' watch was seen by Muller in a railway car. Briggs was asleep; the watch was exposed, and Muller killed Briggs by a sudden attack, and succeeded in making his escape. He was afterwards arrested, convicted on circumstantial evidence, and before execution confessed the homicide with the motive. Until the confession the justice of the conviction was largely criticized, on the ground that the stealing of a watch was not a motive that could explain a murder so bold, so cruel, and the chances of exposure so great. But the reply to this is obvious. Crime is rarely logical. Under a government where the laws are executed with ordinary certainty, all crime is a blunder as well as a wrong. If we should hold that no crime is to be punished except such as is rational, then there would be no crime to be punished, for no crime can be found

that is rational. The motive is never correlative to the crime, never accurately proportioned to it. Nor does this apply solely to the very poor. Very rich men have been known to defraud others in mere trifles, to forge wills, to kidnap and kill, so that an inheritance might be theirs. When a poweful passion seeks gratification, it is no extenuation that the act is illogical; for when passion is once allowed to operate reason loosens its restraints."

Now, whether the motive be a desire for gain or the satisfaction of some real or imaginary wrong, we can not find one powerful enough to ever be denominated as correlative or proportionate in the mind of an honest man, in the mind of a man who controls that mind in such a way as to keep it under the proper moral restraint, so that it recognizes these moral obligations and its legal duties to others. When it ceases to be under that restraint, men, of course, become reckless, and it will consquently cause them to look upon life as a comparatively trifling thing, and they will take life for a less consideration, a less motive, than would the man who is governed, whose mind is governed properly, who is governed by moral restraint. If you can find the existence of motive, so much the better; but whether you find it or not, if the other facts and circumstances in the case show the guilt of the accused beyond a reasonable doubt, it is your duty to find guilt, and you need not stop in hunting for this motive to find that it was correlative and proportionate, for you never can find it; you will not find any motive of that kind, nothing of the kind, because you are honest men, you are men whose hearts are under proper moral restraint, you are men whose minds will enable you to recognize your obligations to your fellow men, and consequently the law recognizes that fact as being a fact that exists, and for that reason, because the motive may be overlooked by such men because of its trifling character, because of its inconsiderable nature, it does not require that it should be found by them, and again for the reason that it is sometimes impossible to note it, it is sometimes very difficult to ascertain what was the real motive. Now, when you have looked for the motive, if you find it existing then you have one proposition that you may take into consideration that is pertinent to the inquiry as to whether the defendant is the party who committed the act or not.

Now, with the existence of motive to prove that he did it, other things must concur to show he was the party who committed it. Secondly, whether he had the means or the weapon with which the crime was committed at the time of its commission. That is the second consideration you are to look at, because if he didn't have the means to commit it in the way it was done that is a fact that would be in his favor; that is a fact that would leave a missing link in the investigation so prominent and so powerful and so necessary to connect the chain of evidence that the chain would drop to pieces because of its failure to have that connecting link. Another pertinent inquiry is, if he had the means, whether he had the opportunity to commit the crime at the time the same was committed. You see by taking these things up, and asking these questions of yourselves, each of his own mind, and going right to the evidence bearing upon that proposition to see whether it is established or not, to see whether it exists, and in that way connects the defendant with the perpetration of that act, your labors are lightened.

Fourth. You are to take the other circumstances pointing toward the guilt of the prisoner.

452 Fifth. What facts has the prisoner been able to establish in rebuttal of any of the accusatory facts that may be offered against him by the Government? You have a right, and it is your duty, to take into consideration the action and conduct of the defendant after the killing, his actions at the time, or as near thereto as possible, in order to ascertain whether he had an opportunity to commit the act. You have a right to take into consideration his acts after the killing to see whether or not the defendant executed a purpose by taking the life of the deceased, David C. Steadman. But now when you are looking at his conduct after the killing from the theory or standpoint of his guilt, if there is such a position in this case as to afford you a proposition of that kind to stand upon, you are not to look for consistent and reasonable action upon his part, because when a man commits a crime of this kind, a crime that is characterized by the elements which go to make up murder, he becomes blinded to his own interest, as it were; he becomes blinded to that state of case that would protect him from punishment, and the very acts that he does for the purpose of covering up the thing as affecting him are acts that may be looked at by the jury, and are of such a character as to bring guilt to him. He acts irrationally. In other words, he is not in a normal condition. He is, therefore, not capable of reasoning from the same standpoint that an innocent man reasons from. You are to look at all these facts and circumstances that in your judgment show innocence upon the part of the accused, or guilt as affecting him. You have a right, and it is your duty, to take into consideration all of his

453 statements made in regard to the subject of the disappearance of Steadman, and to inquire whether any and all of the statements made by him with relation to his possession of the property, or his having it under his control, and who were the owners of it, and you are to pass upon the question as to whether these statements were consistent at all times. If they were inconsistent their inconsistency is to be taken into consideration to enable you to pass upon the question as to whether or not they were truthful, because you are called upon to pass upon their truthfulness. If a man makes statements about a transaction that are inconsistent, that are untruthful, why that requires some explanation, too, to show the reason of that inconsistency. If the statements made varied at different times, so that one was in want of harmony with another, this variance is to be taken into consideration as evidence of their falsity. If a man is not connected with a crime, if he has not committed a criminal act, there is no reason why he should make false statements in connection with that act, and as a matter of fact he is not apt to do so. It is not the rule of human conduct that he will do so, because truth is a better friend than falsity always, and if a man has it at hand and he can avail himself of the truth, he knows enough by experience to satisfy him that he ought to depend upon that as his best friend; consequently it is the rule of human conduct that men will tell the truth, and will tell consistent stories at all times if they have these stories to serve them, but if they have nothing to rely upon but falsehood, why they will rely upon that.

454 The statements they make, if false, are inconsistent, become frequently irreconcilable, and of such a character that while they may

conceive they are statements that are covering up their guilt from the public gaze, they are sufficient to keep it from the eyes of the jury that may be called upon to pass upon it, yet they are the very things that uncover it; they are the very things because of their inconsistency and falsity, and of their character in that respect that will enable the jury to see the transaction in its true light.

Now, you are to look at the facts and circumstances connecting this defendant with the transaction. Of course you are not to try the case on any mere anticipations of what could have been proven or what might have been proven in the case; that has nothing to do with the transaction. Your oaths bind you to try the case by the law and the evidence, and the evidence in the case is that which has been admitted to you as proof.

In regard to the credibility of these witnesses you are not to be led to the right or left in this investigation by improper appeals in regard to the brother of the deceased. That brother, who is a brother who will not manifest an interest in bringing to light the circumstances and facts connected with the killing of his brother, is not worthy of the name; and when he comes into court and gathers up the witnesses and undertakes to get all the facts before the jury he is doing that which commends him to the highest meed of praise, because it is the duty of every good citizen to do it, and he is not to be abused, nor are you to entertain prejudice in your minds against the case because he may have taken a deep interest
455 in it, as he ought to do, and he would not be worthy of being called by the name of brother if he had not done it. It ought to be the duty of every citizen to do it, and your minds are not to be affected by a feather's weight by such appeals. The testimony and the law in this case is that which is to be considered by you to enable you to get at the truth, to arrive at the true state of case. The law enables you to know what the crime is. These duties are of that character that they must be discharged in exact harmony with the obligation that you have assumed to discharge them; you must do your full duty. Of course I do not consider that anything of that kind would have any influence upon you, but it is but due the man who appears here in the attitude of brother to the deceased that this much should be said, because men who go into the courts of the country to avail themselves of the protecting power of the law in behalf of society when some relative may have been slain are not to be driven out of such courts by abuse. His place is right there by the side of the Government in the interest of justice, to aid by his efforts in upholding the power of the law that all may be protected by the enforcement of its provisions. Now, your duty is, I say, to take into consideration all these facts and circumstances. I have already told you that all these propositions are to be solved by one of two kinds of evidence, either positive proof or by circumstancial evidence, or by both combined. All of them are to be largely solved by circumstantial testimony in part or wholly.

There is one proposition, as I have told you, in every case of murder that must be proved alone by circumstances. It can not be
456 proven in any other way, and that is as to what was the condition of the mind that generated the act; whether it was in a condition to show that it did the act wilfully, and consequently with malice aforethought; whether it acted from a premeditated purpose formed because of cupidity or desire for revenge or from any other motive. That fact, es-

sential to every case of murder, can only be established by circumstances that stand around the transaction, because, as I have told you, that is the only way to get at the condition of the mind. You can not view it as a piece of machinery and see it and tell what it is doing by looking at it; you can not do that. If you could, that would be positive proof of it; that is what we call positive evidence. Then you must prove it in some other way, and, I repeat, if every case is of this kind and we know it to be so, if you can not rely upon that sort of evidence, if you can not depend upon it, you may as well close your courthouses and shoulder a shotgun and put a pistol in your belt and become the defender of your own rights, depending upon mob violence and your own strong arm to defend your rights; you may as well tear down the houses you live in and build solid walls to protect you against the burglar and the assassin. As it is now, by the reasonable and sensible rules that the law gives you to solve these problems, and that you have to secure its enforcement, you do not have to do that to protect yourself. When you go to bed at night, although there is nothing but a transparent thing called a pane of glass between you and the outside assassin or burglar—yes, there is something else outside in the shape of the mandate of the law saying to the
457 murderer, "You take that man's life, be it in the lonely wilds of the Indian country or in a dwelling house where a man is peaceably sleeping, and you die for it;" that the voice of your countrymen in their own interest and in their own preservation will proclaim that mandate. That is the mighty power that walks abroad, invisible though it may be, throughout the length and breadth of this great land, each and all protecting. It is a weapon and arm in the hand of the honest and impartial and deliberate and fair-minded citizens as jurymen of this country, protecting each and every citizen in it. Your duty in this case, as in all cases, is to administer the law, because by this alone is their safety and security for life, for liberty, and property. It is because the law is administered, and bad and wicked men know it, that you and every citizen in the land are secured in your lives and property. The more expedition and certainty in the enforcement of the law, the better and more vigorously the law is administered, the greater terror it is to wrong-doers, and, consequently, the more security it affords. Is this true? Why, it is self-evident to every honest-minded man. How is the purpose of the law to be subserved then? If it is impossible to do it because you can not find these truths necessary to proclaim the facts, why, then you may as well stop; we are at sea, with nothing to protect us, with no security around us; but then the law is wise as well as just, as well as humane; and in its wisdom it does not require of you impossibilities. The law takes you as ordinary men of intelligence; it considers that you can do just exactly what
458 ordinary men of intelligence can do. You can find facts when the evidence is before you that enables you to find them, whether that evidence be of a circumstantial or positive character.

Now, let us see what those who have administered the law think of circumstantial evidence. Prejudice is very often created against it. Judge Dillon says, in the trial of a case in Iowa:

"This kind of prejudice against circumstantial evidence is constantly resorted to in capital trials to frighten jurors into the belief that there should be no conviction on circumstantial evidence; to frighten men into the be-

lief that they can not rely upon it. The law exacts a conviction wherever there is legal evidence to show the prisoner's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence."

Wherever the evidence convinces you beyond a reasonable doubt, whether it be circumstantial or positive, it is sufficient to warrant a conviction; and it convinces you beyond a reasonable doubt when all of the evidence considered together of whatever character is equal to the proving power of what would be the testimony of one credible, uncontradicted, unimpeached eye-witness.

Now, here is a case where the court charged the jury, and in the charge I think he gave the real status of the law as to this kind of evidence. It was a case where every fact in the trial had to be proven by circumstances. It is called the Udderzook case, and was tried a few years ago in Pennsylvania. It grew out of a state of case where there was a conspiracy to defraud an insurance company entered into between Udderzook and
159 the man he killed, the latter being used simply as a cat's paw to enable the former to consummate his purpose. It was a case where the corpus delicti had to be proven by circumstances. He secured an insurance upon the life of a man.

(The defendant here expressed a desire to retire for a moment, and a recess of 10 minutes was taken.)

I was about to remark that, in this case, this charge was given upon the subject of circumstantial evidence; that it was a case where the identity of two dead bodies were to be established by circumstantial evidence alone, and as far as the question of the guilt or innocence of the defendant was concerned, every single proposition in the case was to be solved by circumstantial evidence. This man Udderzook entered into a conspiracy with one Winfield Scott Goss to obtain an insurance policy upon the life of Goss. Goss disappeared and Udderzook was claiming the policy. The policy was very large, being one of fifteen or twenty thousand dollars. Awhile after it was effected Udderzook goes to work, and in his carpenter's shop in Philadelphia, in the outskirts of that city, he places a dead body and set the shop on fire, arranging it so that it is discovered when this body that was in there was charred beyond identification. The people rushed there and rescued the body, and it was supposed and believed by many at the time to be the body of this man upon whom he held this heavy insurance, but afterwards the insurance company became suspicious and refused to pay the policy. An inquiry was instituted, which lasted for quite a while. Still the man Goss, who was insured, was lost. Goss was a brother-in-law of
160 Udderzook. No trace of him could be found. Udderzook had been remitting money to him to keep his mouth shut. The man had failed to get the money and was becoming very anxious about it. He was down in an interior town in Pennsylvania, Luzerne or somewhere there. There Udderzook got him, decoyed him out in the woods, and murdered him. His remains were afterwards found by the buzzards soaring around over the body, and it was discovered there in a decomposed condition. It was a case of that kind, and here is what the court said in charging the jury in that case:

"The case of the commonwealth rests upon what is known as circumstantial evidence; and, indeed, where wilful, deliberate murder, contemplated beforehand, is committed it rarely occurs that direct, positive

evidence respecting it exists. Perpetrated, as it usually is, by laying in wait, by means of poison, or by falling upon the victim when no one is by, the only evidence must commonly be found in the circumstances attending it. And this character of evidence is ascertained by experience to be little, if any, less satisfactory than that which is known as direct or positive. Where the circumstances relied upon are properly established, and the inferences arising from each one and from all of them combined point naturally in one direction, there is no greater danger in following them to their conclusion than attends all human investigation. That we may err in such cases is possible; but so we may where the evidence is direct or positive; the circumstances may possibly mislead, but so may the eyes or the ears or the dishonesty of witnesses."

As was said by *Chief* Justice Gibson in the case of the Common-
461 wealth v. Harmon, 4 Barr., 269: "The only difference between positive and circumstantial evidence is that the former is more immediate, and has fewer links in the chain of connection between the premises and conclusion; but there may be perjury in both; a man may as well swear falsely to an absolute knowledge of a fact as to a number of facts, by which, if true, the question of guilt or innocence is solved. No human testimony is superior to doubt. The machinery of criminal justice, like every other production of man, is necessarily imperfect, but you are not, therefore, to stop its wheels. Innocent men have doubtless been convicted and executed on circumstantial evidence; but innocent men have sometimes been executed after having been convicted on what is called positive proof. All evidence is more or less circumstantial, the difference being only in the degree; and it is sufficient for the purpose when it excludes disbelief—that is, actual disbelief—for he who is to pass on the question is not at liberty to disbelieve as a juror while he disbelieves as a man. It is enough that his conscience is clear."

Now, that was the evidence that was relied on in that case, and that is the way that character of evidence was held to be by the court that tried that case.

Judge Shaw, in speaking of this kind of evidence in the case of Webster, that I have already alluded to, it being a case, as you will remember, where the killing of Doctor Webster, and where the fact of the means used to produce the death all had to be established by circumstances, or not established at all, says:

"This case is to be proved, if proved at all, by circumstantial
462 evidence, because it is not suggested that any direct evidence can be given; or that any witnesses can be called to give direct testimony upon the main fact of the killing. It becomes important, therefore, to state what circumstantial evidence is, to point out the distinction between that and positive or direct evidence, and to give you some idea of mode in which a judicial investigation is to be pursued by the aid of circumstantial evidence.

The distinction then between direct and circumstantial evidence is this: Direct or positive evidence is when a witness can be called to testify to the precise facts which is the subject of the issue on trial; that is, in a case of homicide that the party accused did cause the death of the deceased, whatever may be the kind or force of the evidence, this is the fact to be proved. But suppose no person was present on the occasion of the death, and of

course no one can be called to testify to it, is it wholly unsusceptible of legal proof? Experience has shown that circumstantial evidence may be offered in such a case; that is, that a body of facts may be proved of so conclusive a character as to warrant a firm belief of the fact quite as strong and certain as that on which discreet men are accustomed to act in relation to their most important concerns. It would be injurious to the best interests of society if such proof could not avail in judicial proceedings. If it were necessary always to have positive evidence, how many criminal acts committed in the community destructive of its peace and subversive of its order and security would go wholly undetected and unpunished.

463 The necessity therefore of resorting to circumstantial evidence, if it be a safe and reliable proceeding, is obvious and absolute. Crimes are secret. Most men, conscious of criminal purposes, and about the execution of criminal acts, seek the security of secrecy and darkness. It is therefore necessary to use all other modes of evidence besides that of direct testimony, provided such proofs may be relied on as leading to safe and satisfactory conclusions; and thanks to a beneficient providence the laws of nature and the relations of things to each other are so linked and combined together, that a medium of proof is often furnished leading to inferences and conclusions as strong as those arising from direct testimony.

On this subject, I will once more ask your attention to a remark on the work already cited, East's Pleas of the Crown. "Perhaps," he says, "strong circumstantial evidence in cases of crimes like this, committed for the most part in secret, is the most satisfactory of any from whence to draw the conclusions of guilt; for men may be seduced to perjury by many base motives to which the secret nature of the offense may sometimes afford a temptation; yet it can scarcely happen that many circumstances, especially if they be such over which the accuser could have no control, forming together the links of a transaction, should all unfortunately concur to fix the presumption of guilt on an individual, and yet such a conclusion be erroneous. Each of these modes of truth has its advantages and disadvantages; it is not easy to compare their relative value. The advantage of positive evidence is that you have the direct testimony of witnesses to the fact to be proved, who, if he speaks the truth, saw it done;

464 and the only question is whether he is entitled to belief. The disadvantage is, that the witness may be false and corrupt, and the case may not afford the means of detecting his falsehood.

But in a case of circumstantial evidence, where no witness can testify directly to the fact to be proved, you arrive at it by a series of other facts, which, by experience, we have found so associated with the fact in question as in the relation of cause and effect that will lead to a satisfactory and certain conclusion, as when footprints are discovered after a recent snow it is certain that some animated being has passed over the snow since it fell, and from the form and number of the footprints it can be determined with equal certainty whether it was a man, a bird, or a quadruped. Circumstantial evidence, therefore, is founded on experience and observed facts and coincidences, establishing a connection between the known and proved facts and the facts sought to be proved. The advantages, that as the evidence commonly comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail of their

purpose. The disadvantages are, that a jury has not only to weigh the evidence of facts, but to draw just conclusions from them, in doing which they may be led by prejudice or partiality, or by want of due deliberation and sobriety of judgment, to make false and hasty deductions, a source of error not existing in the consideration of positive evidence."

A man is shot. Smith comes up and says he saw Jones shoot
465 him; that is positive evidence of it. The fact in issue is whether Jones did shoot him or not; or, if you please, whether he was shot or not. Now, he comes up and says he saw it; that gives us positive proof of it. But suppose nobody saw it but the man who was shot and the man shooting; the man who is shot is dead; then we have the wound, the hole through his head, and our observation would teach us that it was produced by certain means. That is a circumstance to be looked at by the jury in passing upon that question, and if it is sufficient, in their judgment as reasonable men, to establish the fact that the party was shot, why it proves it, although it is only a circumstance going in that direction. You see the circumstance that is left is an index to the means used. The hole in the skull is a circumstance. In the case of an eyewitness, the man who saw the shooting would give positive proof of it, the proposition being whether or not the party was killed in that way.

Now, gentlemen, it is your duty in this case to gather up all the circumstances, whether they be acts or whether they be words. You are to bear in mind this rule of human conduct that I have already given you that characterizes the action, of men, and because it is a rule of human conduct we are authorized to use it, and by the light of it weigh the facts and circumstances. If a man is not connected with a criminal act, if there is any conduct or words or declarations of his that are in existence, they will harmonize, as a rule, when properly examined, with his innocence; they will harmonize with that theory. They will not be accusatory in their charac-
ter; on the other hand, if he has committed a crime the fear of
466 punishment naturally overtakes him, a consciousness of wrong governs his mind to such an extent that whatever that mind generates, whatever is done by him will likely be inharmonious, will be inconsistent from a standpoint of innocence; the statements made will not be in harmony with the truth, and they will not harmonize with the theory of innocence. Because this is so, you are to see what the actions and conduct of the defendant were; whether they were reasonable from the theory and from the standpoint of innocence, and whether they were consistent; whether in the light of this rule of human conduct his action was probable action, or these declarations are such probable and reasonable declarations as would have been made by a party who was so situated with relation to the transaction as that he was innocent; or was there, upon the other hand, other accusatory facts and circumstances. Whether, in the first place, if it is a fact that there was any motive for the transaction, not that you are to stop to see whether it was adequate or not, but if there was was any motive, any desire for gain, any opportunity for gain, by the removal of this man by the taking of his life; if that existed you may treat that, if you please, as a starting point. Then you are to see what other facts and circumstances surround this defendant, as created himself, or as springing out of his relation to the case, one way or the other, that have been brought to light, created by him either at the

time of the killing or subsequently thereto; you are to weigh all of these as rational, as reasonable, as sensible men, and although they may be only circumstances, if when all taken together and weighed by you and examined by you they are sufficient in your judgment to establish beyond a reasonable doubt the guilt of the accused, as charged in
467 this indictment, the case is one standing proven before you, and your duty would be to find the defendant guilty as charged. Now, of course, these facts and circumstances are to receive proper consideration. You are to look at them, weigh them all, each and every one of them, singly and together. You are to see how consistent upon the theory of either guilt or innocence they are, how probable and reasonable and truthful they are in their own light, and in the light of all other facts and circumstances. Whether, in short, the conduct of this defendant from the standpoint of innocence in this transaction, taking into consideration his declarations, was in harmony with that theory of innocence; if so, then these facts and circumstances cease to be accusatory facts against him, but, on the contrary, if the actions or declarations of the defendant were wanting in harmony with innocence, you are to see how much their combined weight establishes; whether it makes a case equal to what would be the testimony of one credible, uncontradicted, positive eyewitness; if so, I say the case is established.

Now, each and every one of these circumstances are fresh in your memory, as they have fallen from the lips of the witnesses in the case; you are to remember them all. You are the judges of the credibility of the witnesses. You have the right to consider and it is your duty to consider the opportunity that each and every witness had for knowing the facts; the observations made by the witness or witnesses; what was heard by each and every one of them, the ability of that witness to retain what was observed or what was heard by him, and to give it to you as it occurred or
468 as it was heard. All of these things you must observe in passing upon the testimony of each and every witness. Then you pass upon the testimony of that witness in the light of the evidence in the case, because the testimony may seem to be inconsistent or unreasonable when considered alone. We may have a different view of it when we view it in the light of the other evidence, or it may seem to be inconsistent when looked at by itself, or it may seem to be consistent, and that consistency or inconsistency may disappear when it is viewed in the light of the other evidence. Then you are to consider each and every fact in the light of the other facts. First find what facts are true. Satisfy yourselves first upon that proposition, then consider them altogether; see whether they harmonize; see whether they are reasonable; see whether they are consistent. The rule that makes you the judges of the credibility of each and every witness goes further than that. It says that you take into consideration these things that I have enumerated; then you consider the actions and appearances of the witness before you; you consider the reasons that the witness may have for giving the evidence; you consider the motive that such witness may have, if any exists, not that any improper motive arises out of the fact that witnesses are called into the case on one side or the other. It is their duty when called to be present and give what facts they may know in the case, and *know* improper motive is to be attributed to a man when he is doing his duty. Therefore, from that attitude in the case, you can

draw no deduction against the evidence of the witness. If a
469 party is so situated in the case that he is likely to be warped or controlled in his mind in regard to what he may offer as his evidence, that is to be considered by you; that is a thing that more especially applies to the defendant from his situation when he goes upon the stand as a witness than to the other witnesses in the case. The defendant in this case goes upon the stand. You are to ascertain, first, what statements he made.

Now, you are to see whether these statements are in harmony with the statements made by him at other times and under other circumstances than those which surround him here; if they are, and his story is consistent, and it has been consistent throughout, it will have an air of truth attached to it; but if they are in want of harmony, if he has made statements in regard to the money part of this transaction or in regard to any other fact to other witnesses who have testified to it, who are credible and reliable, and he contradicted them upon the stand, why, that puts him in an inconsistent attitude, growing out of his inconsistent conduct, and it puts him in an attitude of fabricating a story upon the stand; also, if you believe the opposite of that story has been proven sufficiently by other testimony, then you are to look at his statement in the light of the other evidence, in the light of the other testimony; you are to take what statements he makes upon the stand in regard to the transaction and compare them with statements you find to be proven, made by him at other times, with relation to the transaction, or with relation to his connection with the man who was killed. Then, again, you are to take his evidence and view it in the light of the attitude he bears to this case.

470 He is necessarily in an attitude where he has the highest possible motive that he can ever have in any situation in life to have you take a favorable view of his case. He is in an attitude that any of us would be in if so situated, and the question becomes pertinent, the question whether or not that attitude is not of that character that it would swerve the mind of any man, no matter how strong it might be in its moral conceptions; whether or not that mind would not be imperceptibly carried to that side of the case that would benefit the party who possessed the mind. Then when a party is so situated you are to look at that attitude that he bears, to look at the interest he has in the case, to look at the problem in the light of the usual actions of men under such circumstances, and above all, you are to view it, as I have told you, in the light of the other evidence, in the light of the other facts. If from the whole evidence you are satisfied to the extent that you would require your minds to be satisfied if passing upon a proposition of importance if these facts were presented to you, and you were called upon to pass upon them to ascertain in your judgment as to the correctness of one side or the other—if the facts in this case offered go to that extent that they would satisfy you when so situated that the case was proven, why you are to be satisfied here in the language of the law I have read to you, because you have no right to be satisfied as such men outside of the jury box and not be satisfied in it. If the case is proven; in other words, to that extent that you have an abiding faith to a moral certainty, to a high degree of certainty, of the truth of the charge, it is
471 established. If it is not proven that way, it is in that condition of doubt that you may act upon it. That does not mean you are to act

upon any doubt, because if you are to act upon any doubt you never will believe in any case, as there are doubts that are incapable of being dispelled, but they are not reasonable doubts; they are not what is known as a real substantial doubt of guilt, but mere conjectures as to the possibility of innocence, and that you can not act upon. It must be a real, substantial doubt of guilt, flowing naturally and reasonably to your minds from the whole testimony in the case. When that condition controls your minds there is a failure to establish the case, but when it is carried beyond that it is proven, and you are to believe it. Now, if proven, your duty is plain in this case; there is but one verdict you can return, and that would be a verdict Guilty of murder, because there is no other degree of crime in this case if crime exists. If Steadman was killed by criminal agency of the kind named in the indictment, if the proof stopped at that point, it would necessarilly, as I have already told you under the law, be murder. That would establish the first proposition. Then if all these other facts and circumstances to be considered and weighed by you and taken into consideration by you, bring that crime home to the defendant, why the only verdict that can be rendered by you is a verdict Guilty of murder, because there are in the light of the proof no mitigating circumstances to make it a crime of less grade. There is no law of self-defense in the case; nothing of that kind pertinent to it; and the only correct response, if it is proven in that way, would be a response coming
172 from you that the defendant is guilty of the crime of murder. If he is not proven guilty, a correct response would be, we the jury find the defendant not guilty.

I ask you to take these facts into consideration. I ask you to find exactly what the truth of the case is, as far as it is possible for you to find it. First, then, take the principles of the law defining this crime, to see whether it is applicable to this state of case or not; if it is, and you are satisfied of it, your duty to the law of your country, the oath you have taken, the obligation you have assumed to your fellow men, proclaims to you that you should assist the law in executing its mandates in this case, as in all others, because the safety, the welfare, the peace, the happiness, and the prosperity of the men who make up society demand that it should be done. I ask you to give it that consideration that it merits. This is a case of great magnitude. It is a case of great importance. As a matter of course you are not to be startled by its importance from the performance of your duty. You are to adhere to the line of your duty in this case. Your duty is to try the case by the law and the evidence. Then, when you have done that, the consequences are not upon your heads. You did not commit the act; you have not committed the crime. You are not responsible for its commission in any way, shape, or form. I am sure if you had been there, and an opportunity had been afforded, it never would have been committed.

Your simple, plain, and imperative duty is to speak the voice of the law, and ascertain whether a crime has been committed, and if so, whether committed by this defendant or not.

Gentlemen, you will retire to make up your verdict.

173 To which charge the defendant at the time offered no objections, nor did he at the time offer any objections to the time or manner of its delivery.

To the subject matter of which charge, however, the defendant by his motion for new trial objected generally and specially, as follows, to wit:

"Sixth. Because the court erred in its instructions to the jury as to the law of the case, as follows, to wit:

First. The court stated to the jury in its charge, page 1, lines 2 to 6, 'and is charged with being guilty of murder, because on the 21st day of October, 1889, in the Creek Nation, he took the life of David C. Steadman,' in thus stating as a fact to the jury what was the material and controverted issues in the case.

Second. Page 4, lines 7 to 18, in that the instructions of the court are misleading and argumentative, calling special attention to the inculpatory facts, without any reference to those facts which were exculpatory.

Third. Page 5, lines 3 to 9, the court states: "It shows with great force how futile, and I was about to say nonsensical, is this position assumed, that if we can not find positive evidence of the commission of a crime like murder, that we are to stop the wheels of justice, stand idly by and let streams of blood flow past us running from murderous wounds inflicted by the vicious, the bad, the vile, and the wicked." And in lines 10 to 23, same page, in that it is misleading to the jury and prejudicial to the defendant.

Fourth. On page 8, lines 21 to 24, in that the court's instructions are misleading to the jury.

474 Fifth. Page 17, lines 16 to 24, in that the court stated to the jury as a fact that which was a controverted material issue in the case.

Sixth. Page 18, lines 1 to 9, in that the court misleads the jury by telling them in effect that the piece of skull produced in court was the skull of deceased David C. Steadman, and of itself unfolded the crime. The whole of page 18 of the charge here referred to is argumentative of defendant's guilt, and states as premises disputed facts. And lines 22 and 23 of said page 18, in that the court's charge states to the jury that they had found David C. Steadman dead, and by means charged in the indictment, which was a disputed fact.

Seventh. Page 34, lines 9 to 17, is error, in that the court directs the jury that a murder had been committed with a deadly weapon, and with malice aforethought, and in line 24 of same page, that the corpus delicti was proven.

Eighth. Page 38, lines 17 to 20, in that it is a misstatement of the law.

Ninth. Page 41, lines 15 to 19, in that the court instructs the jury on the question of motive, in effect that defendant had taken the life of deceased David C. Steadman.

Tenth. Page 41, line 19 to bottom of page, in that the court instructs the jury, by implication, that they are to view the case from the standpoint of defendant's guilt.

Eleventh. Page 43, in that the whole page is an argument to the jury on the theory of defendant's guilt.

475 Twelfth. Page 44, lines 8 to 24, in that the court misleads the jury by referring to deceased Steadman's brother in a manner calculated to prejudice them against the rights of the defendant.

Thirteenth. Page 44, line 4, in that the language used is misleading to the jury, and argumentative of defendant's guilt.

Fourteenth. Page 47, in that the language is argumentative, and prejudicial to the defendant.

Fifteenth. Page 49, in that the instruction is misleading, and argumentative of the sufficiency of the circumstantial evidence, and prejudicial to defendant.

Sixteenth. In that the court fails to instruct the jury that it is the policy of the law that they are to believe the defendant innocent until he has been proven beyond a reasonable doubt to be guilt as charged in the indictment.

Seventeenth. In that the court directed the jury to view defendant's actions from the standpoint of defendant's guilt.

Eighteenth. In that the charge as a whole is argumentative of defendant's guilt, and the sufficiency of the evidence to warrant a conviction."

His objections to said charge were overruled by the court, when it passed on the motion for new trial, to which ruling the defendant at the time excepted.

And the jury having returned a verdict against defendant as follows, to wit:

SATURDAY MORNING, 8½ O'CLOCK, *June 21st*, 1890.

476 Court met pursuant to adjournment. Present, honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES *vs.* WILLIAM ALEXANDER. } Indictment for murder, No. 2.

On this day come the United States of America by W. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal, and by his attorneys, Du Val & Cravens, and Barnes, Boudinot & Reed; and now come the jury heretofore empanelled for the trial of this cause, in charge of a sworn bailiff of this court, to wit:

Jarvis L. Barker, Joseph H. Criner, Allen D. Chandler, David Coulson, John M. Haines, Jeremiah J. Henson, Nat Jackson, Robert Henderson, Langdon Sutton, who took their seats in the jury box, and, after having received the charge of the court, retired in charge of the sworn bailiff aforesaid to consider of their verdict, and after some time returned into court the following verdict, to wit: We, the jury, find the defendant, William Alexander, guilty of murder as charged in the within indictment.

(Signed) J. L. BARKER, *Foreman.*

On motion of defendant by his attorneys, the jury was polled and each answered for himself that the verdict as read by the court was his verdict. Whereupon the jury was by the court discharged from the further consideration of the case, and the said defendant remanded to the custody of the marshal to await final sentence.

477 Time was allowed defendant to file his motion for new trial, and on the 2nd day of August, 1890, defendant by leave of the court filed his motion for a new trial, in the following words and figures, to wit:

In the circuit court of the United States for the western district of Arkansas.

THE UNITED STATES, PLAINTIFF,
vs.
WILLIAM H. ALEXANDER, DEFENDANT.

The defendant, William H. Alexander, moves the court to set aside the verdict of the jury in this cause and grant him a new trial herein, for the following reasons, to wit:

First. Because there is not sufficient testimony to support the said verdict.

Second. Because the said verdict is contrary to the evidence.

Third. Because the verdict is contrary to the law.

Fourth. Because the court erred in admitting the testimony of J. G. Rawls as to a confidential communication made to him as the attorney of defendant, Alexander.

Fifth. Because the court erred in excluding the testimony offered by the defendant to prove the threats to kill Steadman made by House and others while they were hunting said Steadman under the belief
478 that said Steadman had seduced the wife of said House and was secreting himself with her in the neighborhood.

Sixth. Because the court erred in its instructions to the jury as to the law in the case, as follows, to wit:

First. The court stated to the jury in its charge, page 1, lines 2 to 6, "and is charged with being guilty of murder, because on the 21st day of October, 1889, in the Creek Nation, he took the life of David C. Steadman, in thus stating as a fact to the jury what was the material and controverted issue in the case.

Second. Page 4, lines 7 to 18, in that the instructions of the court are misleading and argumentative, calling special attention to the inculpatory facts, without any reference to those facts which were exculpatory.

Third. Page 5, lines 3 to 9, the court states: "It shows with great force how futile, and I was about to say nonsensical, is this position assumed, that if we can not find positive evidence of the commission of a crime like murder that we are to stop the wheels of justice, stand idly by and let streams of blood flow past us, running from murderous wounds inflicted by the vicious, the bad, the vile, and the wicked." And in lines 10 to 23, same page, in that it is misleading to the jury and prejudicial to defendant.

Fourth. On page 8, lines 21 to 24, in that the court's instructions are misleading to the jury.

Fifth. Page 17, lines 16 to 24, in that the court stated to the jury as a fact that which was a controverted material issue in the case.

Sixth. Pages 18, lines 1 to 9, in that the court misleads the
479 jury by telling them, in effect, that the piece of skull produced in court was the skull of deceased David C. Steadman and of itself

unfolded the crime. The whole of page 18 of the charge here referred to is argumentative of defendant's guilt, and states as premises disputed facts. And lines 22 and 23 of said page 18 in that the court's charge states to the jury that they had found David C. Steadman dead, and by means charged in the indictment, which was a disputed fact.

Seventh. Page 34, lines 9 to 17, is error, in that the court directs the jury that a murder had been committed with a deadly weapon and with malice aforethought. And in line 24 of same page, that the corpus delicti was proven.

Eighth. Page 38, lines 17 to 20, in that it is a misstatement of the law.

Ninth. Page 41, lines 15 to 19, in that the court instructs the jury on the question of motive in effect, that defendant had taken the life of deceased David C. Steadman.

Tenth. Page 41, line 19 to bottom of page, in that the court instructs the jury, by implication, that they are to view the case from the standpoint of defendant's guilt.

Eleventh. Page 43, in that the whole page is an argument to the jury on the theory of defendant's guilt.

Twelfth. Page 44, lines 8 to 24, in that the court misleads the jury by referring to deceased Steadman's brother in a manner calculating to prejudice them against the rights of defendant.

Thirteenth. Page 44, line 4, in that the language used is misleading to the jury, and argumentative of defendant's guilt.

480 Fourteenth. Page 47, in that the language is argumentative and prejudicial to defendant.

Fifteenth. Page 49, in that the instruction is misleading and argumentative of the sufficiency of the circumstantial evidence, and prejudicial to the defendant.

Sixteenth. In that the court fails to instruct the jury that it is the policy of the law that they are to believe defendant innocent until he has been proven beyond a reasonable doubt to be guilty as charged in the indictment.

Seventeenth. In that the court directed the jury to view defendant's actions from the standpoint of defendant's guilt.

Eighteenth. In that the charge as a whole is argumentative of defendant's guilt, and the sufficiency of the evidence to warrant a conviction.

Seventh. Because there was error in the selection of the jury, to the prejudice of defendant, in that the defendant was required to make his challenges from the jurors presented without first knowing what challenges the Government's attorney had made, and thus defendant challenged two jurors, to wit: C. F. Needles and Samuel Lawrence, who were also challenged by the Government's attorney, whereby defendant was deprived of two of his challenges contrary to law.

Eighth. Because the court did not instruct the jury in writing.

Ninth. Because the court did not instruct the jury at the close of the evidence, and before argument by counsel.

481 Tenth. Because the defendant was not served with a list of the witnesses against him prior to his trial within the time prescribed by law.

Eleventh. Because defendant was not served with a panel of the jurors prior to his trial within the time prescribed by law.

Twelfth. Because the court did not require the Government's attorney to open the argument to the jury as required by law.

Thirteenth. Because the court required defendant's two attorneys to make two separate arguments and open the argument, prior to any argument by the Government attorney, giving them no chance to reply to any matter stated in the argument of the Government's attorney, contrary to law.

(Signed) DU VAL & CRAVENS, and
BARNES, BOUDINOT & REED,
Atty's for Def't.

And after argument by counsel, said motion being by the court overruled, defendant at the time excepted.

And thereupon the court extended to defendant thirty days time in which to prepare and file his bill of exceptions, which defendant here tenders, and prays that the same may be signed, sealed and made a part of the record in this cause; which is accordingly done.

I. C. PARKER,
U. S. Dist. Judge, holding Circuit Court.

482 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the circuit court of the United States for the western district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States as plaintiff, and William H. Alexander as defendant, a manifest error hath happened, to the great damage of the said William H. Alexander, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief-Justice of the said Supreme Court, the 21 day of August, in the year of our Lord one thousand eight hundred and ninety.

[SEAL.] STEPHEN WHEELER,
Clerk of the Circuit Court of the United States.

Allowed by
I. C. PARKER,
U. S. Dis. Judge, Holding Circuit Court.

483 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western dist. of Ark., wherein William H. Alexander, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac C. Parker, judge of the district court of the United States, this 29 day of August, in the year of our Lord one thousand eight hundred and ninety.

I. C. PARKER,
U. S. Dis. Judge, Holding Circuit Court.

484 On this 29 day of August, in the year of our Lord one thousand eight hundred and ninety, personally appeared Wm. M. Cravens before me, the subscriber, he being the attorney of record for Wm. H. Alexander, and makes oath that he delivered a true copy of the within citation to Wm. H. H. Clayton, U. S. dist. att'y for the west'n dist. of Ark., on the 29th day of Aug., '90.

WM. M. CRAVENS.

Sworn to and subscribed the 29th day of August, A. D. 1890.
[SEAL.] STEPHEN WHEELER, *Clk.*
By I. M. DODGE, *D. C.*

485 UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of the circuit court of the United States in and for the western district of Arkansas, hereby certify that the foregoing is a true and correct transcript of the indictment, record, entries, and the testimony taken in the case of the United States vs. William Alexander, indicted for murder in said court, which indictment and testimony are on file in this office; also that writ of error and citation are attached to this transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Fort Smith, in said district, this 9th day of September, A. D. 1890.

[SEAL.] STEPHEN WHEELER,
U. S. Circuit Clerk.

(Indorsement on cover:) Supreme Court U. S. Clerk's office. Received Sep. 16, 1890. No. 1309. William H. Alexander, plaintiff in error, vs. The United States. W. Arkansas, C. C. U. S. Filed September 26, 1890.

In the Supreme Court of the United States

OCTOBER TERM, 1890.

WILLIAM H. ALEXANDER, plaintiff in error,
vs.
THE UNITED STATES.

No. 1309.

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF ARKANSAS.

MOTION TO ADVANCE.

And now, October 27, 1890, comes the Attorney-General, and moves the court to advance the above-named case on the docket of this court, to be heard at the present term. The plaintiff in error is under sentence of death for a capital offense. This is a writ of error to the judgment and sentence, permitted by section 6 of the act of Congress approved January 25, 1889 (25 Stat., 656). The section provides that all such writs of error shall be advanced to a speedy hearing on motion of either party.

Respectfully submitted,

W. H. H. MILLER,
Attorney-General.

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Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term. 1890. No. 1309.

WILLIAM H. ALEXANDER, APPELLANT,

against

THE UNITED STATES, APPELLEE.

Appeal from the Circuit Court of the United States for the Western District of Arkansas.

STATEMENT OF THE CASE.

The appellant, William H. Alexander, and the deceased, David C. Steadman, were acquaintances in Arizona, and in the summer of 1889 agreed to go into the stock business and start a ranche, and afterwards shipped their horses to Oklahoma Territory, and afterwards drove their horses from Oklahoma, across the Indian Territory, to Muskogee, in the eastern part of the Creek Nation, and finally stopped at Choska, a few miles from Muskogee, in the fall of 1889, for the purpose of wintering their horses. After they had been there some ten days, which time they had spent in hunting and riding over the country, and on the day of the disappearance of the deceased, Steadman, they had been to the farm of Jeff. Marshall, about six miles from their camp, and were endeavoring to rent a farm from him, for the purpose of wintering their horses and making a crop the following

year, and were returning to their camp when they came to the corner of the Mayer's Farm, which was a square enclosure of about a thousand acres, grown up for the most part in cane and timber, when the deceased Steadman proposed to the defendant, if he would lead his horse he would go through this Mayer's enclosure, and try and kill a deer, as they were in the habit of using this enclosure and it was a common hunting ground. Appellant and the deceased separated there, and, so far as the testimony discloses, Steadman was never seen alive again. About twelve days after this the body of the deceased, Steadman, was found about a half a mile from the place where he and appellant separated, and between the point of separation and where the body was found, and on the inside of the inclosure, were two cabins, occupied by the witness, James, and Underwood, his brother-in-law. The separation of the appellant and deceased was late in the afternoon, about four o'clock, and on the same evening, about dark, Mrs. Georgia House, wife of Sam House, disappeared mysteriously from Choska, and Underwood also disappeared on the same day. Mrs. House and deceased, Steadman, had been seen in close conversation the day before, and the general impression in the neighborhood at the time was that they had gone off together, and immediately House and his friends, armed with Winchester guns and pistols, were riding through the country hunting Steadman and Mrs. House, whom they believed were concealed together in the neighborhood, or had fled the country together. The deceased, Steadman, and the appellant were upon the friendliest possible terms. They were acknowledged partners in the stock, most of which was in the "6" brand, this being Alexander's own brand. It was in evidence that both Alexander and deceased each had a considerable amount of money in their possession. A short time before the disappearance of Steadman, when

they had sold two horses at Muskogee, the bill of sale was signed by each of them, and Steadman stated then that they were partners. The evidence also showed that when they left Arizona Alexander owned all the horses, fifty-two in number, except twelve head which were owned by deceased, Steadman, and appellant afterwards sold sufficient interest to Steadman to make them full and equal partners in all the horses. The Government claimed they were last seen together by the witness, James, who testified that he saw and talked with them near the Mayer's farm as they were approaching it; that he was going in the opposite direction and met them, and afterwards claimed to see the two horses they were riding near the place where the body was afterwards found, and that he heard some ten or twelve shots. This was contradicted by the testimony of defendant. The testimony of Harvey Garrison and of Thomas H. Barnes and William M. Cravens shows that it was impossible for James to have seen the horses from the point at which he says he was when he claims he saw them; that they had carefully examined the ground between the point where James located the horses and the place where he stated he was when he saw them, and that there is such a rise in the ground between the two points that it is impossible for him to have seen them. This witness, James, was himself, in connection with Underwood, strongly suspected of the crime.

After the separation of appellant and deceased Steadman, Alexander was next seen by two witnesses for the Government near the opposite corner of the Mayer's farm from the one at which they had separated, and on the road leading from point of separation to camp. These two witnesses were returning from their homes at Choska. Saw Alexander for some time before they got to him, as he was sitting on one horse and holding the other waiting in the road, and when they passed him, appellant

described his partner as a man with a gun, and told them to tell him to hurry on if they met him, he was waiting for him. These two witnesses afterwards met a man with a gun and told him to hurry up, that the man down the road was waiting for him, and he answered "all right."

Alexander, after waiting some considerable time, went to his camp where he slept that night; in the meantime the husband of Mrs. Georgia House, in company with several others, were scouring the country around his camp, armed to the teeth with Winchester guns and pistols, with the avowed purpose of killing Steadman if they could find him, as they were under the impression that he was secreted near with Mrs. House. The following day Alexander made vigorous search for Steadman, and was informed that Steadman had eloped with Mrs. House. He, however, kept up a search for his partner, as he called Steadman, assisted by Jim Bruner, a colored man near whose house they were camped, who was afterwards a Government witness against appellant; his testimony, however, is discredited by the testimony of Susan Hope, who shows a violent effort on his part to influence and corrupt the evidence of Caroline Bruner, who was a material witness for appellant and whose testimony was in conflict with that of Jim Bruner.

Some twelve days after the disappearance of David C. Steadman, Mrs. Georgia House and Underwood, who all disappeared same day, the body of Steadman was found by an Indian boy, who reported it to one Perryman, who in turn notified Alexander, by note, of the alleged discovery of a body, and Alexander went to Perryman to ascertain the location of the body so he could find it. They then agreed that they and several others should meet the following morning and make search for it, as it was in the night when Alexander got to Perryman's house. They met according to promise the next morn-

ing, and went through the woods abreast, where the body was reported to be, when some of the party found a portion of the skeleton, which was promptly identified by appellant by the clothing, the spurs, hat, and gun, and also some papers, for the flesh had all been torn from the skeleton, and the bones scattered indiscriminately over the ground around the place. They also found there some silver, some gold, and portions of two twenty dollar greenback bills; also a roll of pulpy matter, which the testimony showed was a large quantity of greenback money chewed up by the hogs, and almost decomposed from exposure to the recent rains and damp ground.

Alexander started to the Indian Agency at Muskogee, immediately to report the matter, but could not cross the river that evening, so returned to camp, and on the following morning went early to Muskogee, and there reported the finding of the body to the Indian Agent and was informed by said Agent, that Deputy United States marshals had started to the place to investigate the matter, and he immediately followed them and overtook them near Choska, told them who he was, where he had been, the business he was on, when they placed him under arrest.

The theory of the Government was that the murder was committed by appellant for the purpose of robbery.

The theory of the defense was that the murder was committed by those persons who were hunting him with the avowed purpose of killing him, under the impression that he was secreted with Mrs. House, and had eloped with her, or that he was killed by James and Underwood by whose house he must have passed, in the Mayer's field.

In refutation of the theory of robbery, the fact is cited that money in great quantity was found with the remains, and appellant was shown to have a large amount prior to Steadman's disappearance; also that no attempt was made to conceal the body; no effort made by appel-

lant to leave the country or dispose of the property; but, upon the contrary, Alexander remained near the scene of the murder, with the avowed intention of waiting for his partner's return or gaining some news from him; also, that he advertised for information of him, in the Muskogee paper, and wrote to his family in California and Arizona. A portion of the skull was in evidence, and disclosed that deceased had been shot at least once with a 38-caliber rifle or pistol, by the single hole in the piece of the skull, whereas, the appellant had no such weapon.

Upon conviction of Alexander for murder in the first degree, motion for new trial was filed, argued and overruled by the Court, and appellant sentenced to be hanged on October 2, A. D. 1890, but an appeal prayed "*in forma pauperis*" and granted by said Court, bill of exceptions by appellant's attorneys embodying the errors enumerated in the motion for a new trial was duly presented and filed, but it was by the Court disallowed, and, at the direction of the Court, the clerk of said Court prepared and the Court approved the bill of exceptions in this cause, excluding therefrom the material errors set out in the motion for a new trial upon the ground that they, the counsel for the defense, failed to note exceptions at the time.

Many objections were not made and exceptions reserved, because, from the uniform practice of the Court, it had become well understood that all objections and exceptions to the rules of practice of this Court, to the selection of juries, the manner and time of the charge, and manner and order of argument were understood by the members of the bar and Court to be objected to, objection overruled, and exception reserved, because these points had been so often passed upon by the Court that it seemed almost an insult to the Court to again raise them.

BRIEF OF APPELLANT.

We maintain that it was manifest error of the Court to require the appellant to exhaust two of his peremptory challenges upon G. E. Nudles and Samuel Lawrence, who had already been challenged by the Government.

The right to peremptory challenge is the right to "reject."

Crimes Act of 1790, chapter 9, Sec. 29.

United States *v.* Marchant, 12 Wheat., 485.

The appellant had a right to reject twenty jurors; he could not reject two who had already been rejected by the Government; and to compel him to do so was to deprive him of two challenges.

The uniform practice of the United States Courts has been to extend to the citizens within the several States the full right of challenge secured to them by the laws of the State in which the court is held.

United States *v.* Shackelford, 18 How., 590.

Appellant's right of challenge and rules under which they must be made in this State are clear and full.

The State is entitled to ten peremptory challenges in a trial for felony, and the defendant is entitled to twenty peremptory challenges.

Mansfield's Digest, 2239 and 2240.

The challenge to a juror shall first be made by the State and then the defendant, and the State must exhaust her challenges to each particular juror before such juror shall be passed to the defendant for challenge or acceptance.

Mansfield's Digest, sec. 2242.

The Court, of course, has power to make rules for trans-

action of its business, provided, only, those rules do not contravene the law of the land.

Fulton *v.* Bank, 1 Pet., 604.
Barry *v.* Randolph, 3 Binn. (Pa.), 277.
Du Bois *v.* Turner, 4 Yeates (Pa.), 361.
Boas *v.* Nagles, 3 S. & R. (Pa.), 253.
Richer *v.* Thomas, 2 Mo., 98.
Brooks *v.* Boswell, 34 Mo., 474.
Kennedy *v.* Cunningham, 2 Met. (Ky.), 538.

We maintain that the method of selecting the jury in this case contravenes the law of the land, and we cite—

2 Blackstone (Book 4), 285.
Forsythe on Trial by Jury, 191.
Thompson & Meriam on Juries, 285.
United States *v.* Marchant, 12 Wheat., 485.
United States *v.* Shackelford, 18 How., 590.

We maintain that it was error to exclude the testimony of J. R. Terry and Harvey Garrison, as to the threats of Samuel House and the armed party with him, made while in the act of hunting said Steadman and Mrs. Georgia House, wife of said Samuel House.

Their testimony showed that House and party were hunting deceased and Mrs. House, and while thus hunting for deceased the party declared their purpose to the effect "that if they could only find Steadman their Winchesters, guns, and pistols would settle it." In connection with the fact that Steadman was afterwards found dead near the place where they were hunting him, these declarations are a part of the act of hunting, and illustrate that act, and as such are admissible, and their exclusion a fatal error upon the obvious rule that a declaration accompanying an act and illustrative of it is admissible at all times.

To the admission of the testimony of J. G. Rawls, an attorney-at-law, appellant objected, for two reasons:

First. Because it was a confidential communication from appellant as his client to him, said Rawls, as an attorney-at-law, and therefore privileged.

Second. Because it was not in rebuttal of any case made out by appellant, and, if admissible at any time should have been introduced by the Government in the presentation of its evidence in chief.

To the first of these objections, there can certainly be no difference of opinion on the subject, that if such a communication was ever made, it was of a confidential character, and on the claim of privilege by appellant, should have been excluded from the jury.

"Whatever is communicated to a legal adviser by a client in confidence, and with a view of obtaining professional assistance, or legal guidance, is a confidential communication, which is protected by law from disclosure in the trial of a cause."

It is a privilege of the client that the legal adviser shall neither be compelled nor permitted to divulge.

Wheeler *v.* Hill, 16 Me., 329.
Brand *v.* Brand, 30 How. (Pr.), 70.
Chivac *v.* Reinecker, 11 Wheat., 280.
Starkie on Ev., Vol. 11, Title Confidential Communications.
Andrew's Adm. *v.* Simon's Adm., 33 Ark., 771.

Rawls was a young attorney at Muskogee, I. T., had not long been engaged in the practice, and if such a communication was ever had, doubtless first gave utterance to the communication inadvertently.

Says Mr. Hageman in his work on Privileged Communications:

"The professional relation between lawyer and client is peculiar, and is held in law more sacred than any other professional relation. It would seem sometimes that young and inexperienced members of the bar, in their practice in inferior courts, forget this, and through the remissness of the court in not interposing an objection,

or else in utter ignorance of the rules of privileged communications, betray the confidence of their clients, by divulging their secrets in violation of that rule."

Hageman Priv. Communications, Sec. 3 *et seq.*

At times it may be true that the rigid enforcement of this rule, of privilege, may operate to the exclusion of truth, but if any one be tempted to condemn the rule on this ground, it would be well to refer them to the eloquent language of the late Lord Justice Knight Bruce, who, in discussing the subject, declared: "Truth, like all other good things, may be loved unwisely; may be pursued too keenly; may cost too much; and, surely, the meanness and mischief of prying into a man's confidential consultations with his legal adviser, the general evil of infusing reserve and dissimulation, uneasiness, suspicion and fear into communications, which must necessarily take place, and unless in a condition of perfect security must take place uselessly or worse, are indeed too great a price to pay for truth itself."

Pease *v.* Pease, 1 DeGex & Sm., 28, 29.
Taylor on Ev. (7 Ed.), sec. 915.
Wharton on Ev., Vol. 1, sec. 576.

This protection extends to every communication which the client makes to his legal adviser, for the purpose of professional advice or aid, upon the subject of his rights or liberties.

Greenl. Ev., sec. 240.
Hunt *v.* Blackburn, 128 U. S., 464.

So highly does the law respect the confidence reposed in an attorney by his client that where certain notes of said client (suspected of having been forgeries) were entrusted to an attorney, the Court would not compel him to deliver them up to the attorney for the State for the inspection of the fraud.

State *v.* Squires, 1 Tyler, 147.
Bayerd's Peake, Law of Ev., Appendix, p. 121.

Oral communications are thus protected as well as written instruments.

Chant *v.* Brown, 9 Hare., 790.
Maxham *v.* Place, 46 Vt., 434.
Higby *v.* Dresser, 103 Mass., 523.
Williams *v.* Fitch, 18 N. Y., 550.
Britton *v.* Lorenze, 45 N. Y., 571.
Orton *v.* McCord, 43 Wis., 205.
Cahoun *v.* Com., 21 Grat., 822.
And many others too numerous to mention.

The Supreme Court of Indiana on this subject says:

"When an attorney is consulted on business within the scope of his profession, the communications between him and his client are strictly confidential, and the attorney should neither be required or permitted to divulge them against his client if the latter object to the evidence, both as to what was said by the client or the attorney to each other."

Jenkenson *v.* The State, 5 Blackf. (Ind.), 465.
Hageman Priv. Communications, sec. 28.

It is not necessary that a fee be paid, or that a suit was or was not pending, to make the communications privileged.

Bacon *v.* Frisbie, 80 N. Y., 394.
Andrews' Admr. *v.* Simon's Admr., 33 Ark., 771.

The rule of Privileged Communication, as applied to attorney and client in civil matters is substantially the same as in criminal justice.

R. *v.* Smith, cited in Phillips on Ev., 171.
R. *v.* Hawkins, C. & Kid., 823.
R. *v.* Dixon, 3 Burr., 1887; also 8 Mass., 370.
1 Taylor on Ev. (7 ed.), sec. 915.

In the State of Ohio, where one was accused of a crime, he communicated to a person who was accustomed to

defend and advise criminals, although not admitted to practice in the courts of the State, but only in justices' courts and before magistrates, such communications were held to be privileged.

Benedict *v.* State (Ohio), 11 N. S., 125.

Under act of Congress, 1862, the law of the State in which the court is held is the rule of decisions as to competency of witness and rules of evidence in United States courts.

Packet Co. *v.* Clough, 20 Wall., 528.

"Any communication made by a party to an attorney while taking his professional advice is privileged and not admissible in evidence. This is a rule of public policy, in the interest of justice. The most unlimited confidence between attorney and client should be encouraged by requiring that, as to all facts communicated in professional consultation, the lips of the attorney should be forever sealed. It makes no difference that no fee is charged or paid to the attorney."

Andrews Admx. *v.* Simon's Admr., 33 Ark., 771.

We note a second objection to the admissibility of the evidence of J. G. Rawls, which applies with equal force to that of Scott Gentry, in that, if the same was admissible at all, it was not admissible at the time it was offered, not being rebuttal in its character. An inspection of said testimony will show that it in no way rebuts any fact adduced in evidence for the defendant, and that it was error of the Court to admit the same at the time it was admitted does not require any citation of the numerous authorities. The rule of practice in that respect is so universally known and followed as not to require anything more than a clear understanding of the status of the case to sustain appellant's objection and exception taken to the ruling of the Court thereon.

In reference to the instructions given by the Court to the jury, in its oral charge after argument by counsel, we submit the instructions to the Supreme Court, with the objections noted thereto, in the motion for new trial; and to the end that exact justice may be done to the appellant, we suggest that the Appellate Court is entitled to have the same impression made upon it that was made by the charge as delivered to the jury; we therefore submit that a rule be issued by the Supreme Court, upon the trial Court, to send up the charge as taken by the two court stenographers as the same was delivered by the Court to the jury; and we further submit that subsequent corrections of that charge ought not to be considered by that Court, because it was the original charge as spoken by the Court and taken "*verbatim*" by the two court stenographers, that went to the jury, that this Court should review.

All of which is respectfully submitted.

A. H. GARLAND,
H. J. MAY,
For Appellant.

The attorneys for appellant in the Court below, not being Counsel & attorneys in this Court, prepared this brief and asked us to sign the same for them, as they are or both expected to be enrolled in this Court before the case was called, but failing in this we sign the brief for them

A. H. Garland
H. J. May

Jan. 17/91

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FILED,
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CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

WILLIAM H. ALEXANDER, plaintiff in error,
vs.
THE UNITED STATES.
No. 1309.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States

OCTOBER TERM, 1890.

WILLIAM H. ALEXANDER, plaintiff in error, *vs.* THE UNITED STATES. } No. 1309.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES.

THE CASE.

This is a writ of error sued out by William H. Alexander, the plaintiff in error, under the act passed January 25, 1889 (25 Stats. at Large, 656, section 6), to a judgment of the circuit court of the United States for the western district of Arkansas imposing a sentence of death upon him for the crime of murder. At the time of the preparation of this brief no assignment of errors has been filed in this court. No errors were assigned in the peti-

tion for the writ of error in the circuit court, so far as the record shows. By rule thirty-five, adopted by this court in pursuance of the sixth section of the statute just referred to, it is provided as follows:

> 1. The plaintiff in error shall file with the clerk of the court below, with his petition for the writ of error, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done counsel will not be heard, except at the request of the court, and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.
>
> 2. The plaintiff in error shall cause the record to be printed according to the provisions of sections 2, 3, 4, 5, 6, and 9 of rule 10.

This rule was adopted and promulgated on Monday November 3, 1890. The writ of error in this case was sued out in September of the same year. If the rule is made to apply to the present case, the writ of error should be dismissed. In view, however, of the fact that it had not been announced at the time the writ of error was taken, it is presumed that the court will not enforce the rule in the present case.

Whether an assignment of errors is to be made in the brief of the counsel for the plaintiff in error we can not know. In any event, the assignment of errors will hardly be more extensive than the grounds assigned on the motion for a new trial in the court below. In the absence of any other guide, it is proposed to consider the case as if the errors had been assigned on the grounds stated in the motion for a new trial.

ARGUMENT.

First ground.

Taking up these grounds as they are set forth on page 289 of the record, we find the first to be that a new trial should be granted "because there was not sufficient testimony to support the verdict." This ground is understood to mean that there was no evidence tending to show that the defendant was not guilty of the crime charged, and that therefore the court should have directed the jury to bring in a verdict for the defendant.

If this is the effect of the first ground, the first answer to it is that no motion of this kind was made before the case was submitted to the jury, and of course no exception was taken to the overruling of such motion. On the merits of such a motion, however, the result could not be doubtful. The defendant was charged with murder, for killing by gunshot David Steadman in the Indian Territory on the 21st of October, 1889. Steadman and the defendant were shown to have been engaged in the sale of horses in the Creek Nation, in the Indian Territory, whither they had come from Arizona.

On the evening that Steadman was last seen by any witness, he and the defendant were riding along a road in the Creek Nation together, both with guns. The defendant was also armed with a pistol. A few minutes later a witness who had met them saw the two horses without riders standing in the road near a wood. Shortly after, eight or nine shots were heard in the wood. The last two shots seemed from their louder report to be from a different gun. A few minutes thereafter the defendant was seen on the road sitting upon one of the horses and leading the other, which had not a rider.

When inquired of as to Steadman, the defendant stated that he had gone through a field with the hope of shooting a deer. It appeared from further evidence that Steadman had a large amount of money on his person at the time he disappeared. Ten days after his disappearance his bones were found within seventy-five yards of the road where the horses were seen standing. His skull was crushed, and had a bullet hole in it back of the ear. The defendant offered contradictory explanations of Steadman's disappearance—at one time said that he had probably been killed; at another time suggested suicide; and at another credited a story which had been circulated in the neighborhood that Steadman and a married woman, who had disappeared the same night, had 'run off' together. When arrested defendant had upon his person $340.

It was in evidence that during the week after Steadman's disappearance, and before the discovery of the body, the defendant had gone to Muscogee and sought advice as to whether objection could be made to his taking away the horses which had belonged in partnership to him and

Steadman, and appropriating them in payment of a debt which he claimed Steadman owed him. Whatever may be argued as to the weight of the evidence, it can not be questioned that it did tend to show every necessary element of the crime of murder, and the guilt of the defendant as charged.

Second ground.

"Because the verdict is contrary to the evidence." This is to be treated we presume, as meaning that the weight of the evidence was against the verdict. While such a ground is eminently proper for the consideration of the court which tried the case, on the question of a new trial, it has been decided by this court in a myriad of cases that the overruling of a motion for a new trial on the ground that the verdict was not sustained by the weight of evidence, can not be assigned for error in this court. (*Parsons* vs. *Bedford*, 3 Pet., 433; *Hepburn* vs. *Dubois*, 12 Pet., 345; *Zeller* vs. *Eckert*, 4 How., 289; *U. S. Express Co.* vs. *Ware*, 20 Wall., 543; *Lancaster* vs. *Collins*, 115 U. S., 222; *Chicago & Northwestern R. R. Co.* vs. *Ohle*, 117 U. S., 123; *Barreda* vs. *Silsbee*, 21 How., 146; *Johnston* vs. *Jones*, 1 Black, 209; *Gregg* vs. *Moss*, 14 Wall., 564; *Northwestern Union Packet Co.* vs. *McCue*, 17 Wall., 508.)

Third ground.

"Because the verdict was contrary to law." This ground has been fully covered in the statement contained in the discussion of the first ground above.

Fourth ground.

"Because the court erred in admitting the testimony of J. G. Ralls as to a confidential communication made to him as the attorney of defendant, Alexander."

The evidence of J. G. Ralls is to be found on page 249. The only objection made to his evidence is found at the bottom of that page—made by Mr. Barnes, of counsel for the defendant, who said:

> I don't know what view the court has of this matter, but we object to the testimony.
>
> The COURT. The objection is overruled.

Exception was taken to this testimony on page 254 as follows:

> Defendant also objected to the testimony of J. G. Ralls as to a statement alleged to have been made to said witness by defendant, and his objections being by the court overruled, and said testimony being allowed to go to the jury, defendant at the time excepted.

Ralls stated in substance that he was practicing law at Muscogee, Indian Territory; that he had seen the defendant once before, at his office in Muscogee, about the time of the Muscogee fair in October, which had before been shown to be on the 22d of that month. The deceased had disappeared on the evening of the 21st of October. Ralls had heard of the fact that Steadman was missing, and also heard of the finding of his body. Between the time of his disappearance and the finding of the

body, the defendant came to his office, and Ralls relates what occurred in the following words (Rec., p. 250):

> He asked me if I was an attorney; I told him I was; he said his name was Alexander, and he went on to state that he and his partner had some forty head of horses across the river, in partnership, and that sometime before that, probably a week before, his partner was missing and he hadn't heard from him. He says his partner had a brother in California, and he was afraid his brother would come up there and make some trouble about the horses; he stated at the time his partner had taken off the money, and he wanted to know if he could hold the horses so as to secure his part of the money. I asked him if the horses would pay him for his part, and he said it would; I told him to hold the horses; they could'nt take them until that was settled.
>
> Q. Did he say anything about taking the horses away out of the country?
>
> A. There was something mentioned about that; I don't remember what that was.

On page 254 it is stated that the defendant objected to the testimony of each of these witnesses in that it was not in rebuttal of his testimony; and his objection being overruled, defendant at the time excepted. This must refer to Ralls' testimony. Upon page 242 it will be seen that when defendant was upon the stand he was asked whether he knew Mr. Ralls; whether he did not go to him at Muscogee; and whether he did not have the conversation to which Mr. Ralls testified subsequently. The defendant denied ever going to Mr. Ralls at all. Ralls' evidence was therefore plainly relevant merely as a contradiction of the defendant, and in that view properly competent

in rebuttal. But the question whether evidence properly receivable in chief may be received in rebuttal is one within the discretion of the court. As Alexander was permitted subsequently (pages 254 and 255 of record) to again take the stand to deny that he had been in Muscogee at the time at which Ralls testified he had the interview with him, he could not have been prejudiced by the failure of the Government to put Ralls upon the stand in making out its case in chief.

The second and chief exception, however, to Ralls' testimony is that the evidence was a privileged communication between client and attorney, and therefore incompetent as against the defendant.

The evidence was relevant in the case in hand as showing an effort on the part of the defendant to realize the fruits of his crime. Having killed his partner and taken all the ready money upon his person, here was evidence to show that he was seeking to appropriate to himself the partnership property, and was fortifying himself with legal advice as to the proper mode of doing so. He was not seeking here to consult counsel as to his defense in the criminal prosecution, but he was using the advice of an attorney to assist him in the further perpetration of crime, namely, the appropriation to himself of Steadman's property.

The protection accorded to a man's statements in consultation with an attorney is never extended to such communications as are made in furtherance of a scheme to commit a crime. There was evidence to show that this was but a step in a plan of murder and robbery, conceived and carried out by the defendant. It was, therefore,

plainly competent. The authorities leave no doubt upon this head. The leading case is that of the *Queen* vs. *Cox and Railton* (14 Q. B. D., 153). This was a crown case reserved before ten judges of the Queen's bench division of the high court of justice. The defendants were indicted for a conspiracy to defraud Henry Munster. The case for the prosecution was that Munster had obtained a judgment against one of the defendants, Railton; that an execution had issued thereon, and the sheriff was met by bill of sale from Railton to Cox, the other defendant, antedating the issue of the execution. The claim by the prosecution was that the bill of sale was a fraudulent bill of sale, entered into between Railton and Cox for the purpose of defeating a judgment and depriving Munster of his rights thereunder.

The question was whether an interview had by Railton and Cox with Goodwin, a solicitor, as to what could be done to avoid the effect of the judgment, was competent evidence, or was prevented from being so as a privileged communication. No question was made that Goodwin was consulted as an attorney. The court unanimously held that the evidence was competent, and in a very learned opinion by Mr. Justice Stephen, the reasons for the judgment are set forth at length. The justice refers to the case of *Greenough* vs. *Gaskell* (1 Mylne & Keen, 98), decided by Lord Brougham in 1833.

After stating the case, he says:

> In this case the rule as to professional communications was laid down in the following words: "If, touching matters that come within the ordinary scope of professional employment, they" (legal advisers)"

receive a communication in their professional capacity, either from a client or on his account, and for his benefit in the transaction of his business, or, which amounts to the same thing, if they commit to paper, in the course of their employment on his behalf, matters which they know only through their professional relation to the client, they are not only justified in withholding such matters, but bound to withhold them, and will not be compelled to disclose the information or produce the papers in any court of law or equity, either as party or as witness." Lord Brougham adds: "The foundation of this rule is not difficult to discover. * * * It is out of regard to the interests of justice, which can not be upholden, and the administration of justice which can not go on without the aid of men skilled in juri-prudence, in the practice of the courts, and in those matters affecting rights and obligations which form the subject of all judicial proceeding." Lord Brougham then proceeds to comment on the terms of the rule so stated, and to say that many apparent exceptions to it are really not within its terms. This rule has been accepted and acted upon ever since, and we fully recognize its authority, but we think that the present case does not fall either under the reason on which it rests or within the terms in which it is expressed. The reason on which the rule is said to rest can not include the cases of communications, criminal in themselves, or intended to further any criminal purpose, for the protection of such communications can not possibly be otherwise than injurious to the interests of justice, and to those of the administration of justice. Nor do such communications fall within the terms of the rule. A communication in the furtherance of a criminal purpose does not "come into ordinary scope of professional employment." A single illustration will make this

> plain. It is a part of the business of a solicitor to draw wills. Suppose a person, personating some one else, instructs a solicitor to draw a will in the name of the supposed testator, executes it in the name of the supposed testator, gives the solicitor his fee, and takes away the will. It would be monstrous to say that the solicitor was employed in the "ordinary scope of professional employment." He, in such a case, is made an unconscious instrument in the commission of a crime.

In the case at the bar, Ralls, if the evidence of the Government is to be believed, was made the unconscious instrument by the defendant in the attempted perpetration of the fraud upon the dead man, or his representatives, which was the very object of the commission of the murder. It can not affect the question that the murder was committed before the communication by the defendant with Ralls. The consultation was not had for the purpose of making a defense to a charge of the crime committed. It was made to increase the fruits of the crime, and was as important a step in carrying out the purpose of the defendant in the murder as the murder itself. An examination of the cases referred to and commented on by Mr. Justice Stephen in *Queen* vs. *Cox and Railton*, *supra*, will show conclusively that the fact that Ralls in this case had no knowledge of the intent of the defendant to use the advice which he gave for a criminal purpose does not change the rule established therein. Such an examination will also show that the fact that the communication was subsequent to the main crime does not take it out of the rule.

In the same case Mr. Justice Stephens says (p. 175):

> We were greatly pressed with the argument that, speaking practically, the admission of any such exception to the privilege of legal advisers as that it is not to extend to communications made in furtherance of any criminal or fraudulent purpose, would greatly diminish the value of that privilege. The privilege must, it was argued, be violated in order to ascertain whether it exists. The secret must be told in order to see whether it ought to be kept. We were earnestly pressed to lay down some rule as to the manner in which this consequence should be avoided. The only thing which we feel authorized to say upon this matter is, that in each particular case the court must determine upon the facts actually given in evidence, or proposed to be given in evidence, whether it seems probable that the accused person may have consulted his legal adviser, not after the commission of the crime for the legitimate purpose of being defended, but before the commission of the crime for the purpose of being guided or helped in committing it. *We are far from saying that the question whether the advice was taken before or after the offense will always be decisive as to the admissibility of such evidence.* Courts must in every instance judge for themselves on the special facts of each particular case, just as they must judge whether a witness deserves to be examined on the supposition that he is hostile, or whether a dying declaration was made in the immediate prospect of death.

See also *Cooney* vs. *Titanahill* (1 Hill, 33); Wharton's Criminal Evidence, sec. 504 and cases cited; Wharton's Evidence, sec. 590.

It is very clear that the trial court did not abuse the

discretion intrusted to it in deciding that the consultation testified to, was *prima facie* in furtherance of a criminal purpose and therefore that the evidence was competent.

Fifth ground.

The fifth ground is that "the court erred in excluding the testimony offered by the defendant to prove the threats to kill Steadman made by House and others while they were hunting said Steadman, under the belief that said Steadman had seduced the wife of said House and was secreting himself with her in the neighborhood."

The statement of the objection to the exception is to be found on page 248 of the record. It is difficult to understand how this evidence could have been relevant.

One of the explanations that the defendant gave of Steadman's disappearance, proved against him by the Government, was that Steadman had run away with the wife of Samuel House (see Moody's testimony, p. 123 of the record; testimony of Samuel A. Orcutt, 129 and 430; and of A. D. Orcutt, 132). It was of course perfectly competent for him to prove the source of the information upon which he based this statement and explanation of his partner's disappearance; and he was permitted to introduce evidence of this kind. (See page 200 of the record, testimony of Joseph Crow.)

The evidence objected to and ruled out by the court, went further, however, and by it it was proposed to show threats by third persons against Steadman for the purpose of showing that they had killed Steadman, and therefore that the defendant did not.

It has been decided that evidence that another committed the crime with which the defendant is charged is not relevant to the question whether the defendant is guilty, because murder is a crime which both might have committed. (See *State* vs. *Henry Beverly*, 88 N. C., 632.) Without however, relying upon this principle, it is established by weight of authority that threats of third persons against the deceased are not relevant to show that the defendant is not guilty. (Wharton's Crim. Ev., sec. 225; *Holt* vs. *State*, 9 Tex. Ap., 571; *Walker* vs. *State*, 6 Tex. Ap., 576; *Boothe* vs. *State*, 4 Tex. Ap., 202; *Crookham* vs. *State*, 5 W. Va., 510; *Banks* vs. *State*, 72 Ala., 522; *Alston* vs. *State*, 63 Ala., 178; *State* vs. *Lambert*, 93 N. C., 618; *State* vs. *Davis*, 77 N. C., 483; *State* vs. *Haynes*, 6 Iredell Law, 236.) A contrary ruling is made in *Leonard* vs. *Territory* (2 Wash. Ty., 381); *Sawyers* vs. *State* (15 Lea (Tenn.), 694); *State* vs. *Johnson* (30 La. Ann. 921).

If it be conceded, as it is generally held, that the defendant may introduce evidence pointing to the guilt of another than himself to show his innocence, threats alone, unaccompanied by other circumstances pointing to the guilt of the threatening party, are too remote to establish that for which they are introduced.

In the case at bar the deceased was last seen on Monday evening about 5 o'clock, very near to the spot in which his dead and mutilated body was afterwards found. A few minutes after his disappearance shots were heard at or near that spot. On that same night the wife of House disappeared. It is conclusively shown by undisputed evi-

dence that she did not go away in company with Steadman. The coincidence of their disappearance in point of time led the husband to suppose that they had gone together. On Tuesday night and on Wednesday, House, in company with other men, was hunting for his wife and Steadman, whom he supposed to be her paramour, threatening to kill him. There is no evidence whatever to show that House went near the wood in which Steadman's body was found, and everything in the case tends to show that Steadman lay dead in the woods at the time the threats were uttered by House.

In this state of the evidence, proof of threats by House against Steadman was far too remote to be relevant for the purpose of showing that House committed the crime with which the defendant was charged. A very similar case is to be found in *Com.* vs. *Abbott* (130 Mass., 472), where the defendant was on trial for the murder of a married woman. Defendant attempted to exculpate himself by showing ill-feeling and threats on the part of the husband against the wife, as tending to show that the husband committed the crime. It was held inadmissible—first, because the ill-feeling was not shown to have continued to the time of the death; and second, because the connection between the husband and the crime was not supported by other circumstances. Said Judge Colt in this case:

> It was clearly competent for the defendant to prove that he did not commit the murder, by showing that some other person did; and, as one step towards that end, he had a right to prove such a state of feeling on the part of the husband, existing at the time of the homicide, as would furnish him with a motive for the commission of the crime. * * *

> The defendant offered nothing, beyond the evidence which we have considered, tending to connect the husband with the crime. It was indeed contended by counsel that some of the circumstances tended to implicate him, and evidence was produced that a stranger was in town and near the place on the day of the murder. But beyond this there was no claim that any particular person was indicated, or suggested by any evidence, as having the means and opportunity to commit the murder, or as being in any manner connected with it.
>
> The existence of ill-feeling as a motive for the commission of crime will not alone justify submitting to a jury the question of the guilt of a person entertaining such feeling. It becomes material only when offered in connection with other evidence proper to be submitted, showing that the person charged with such ill-feeling was in fact implicated in the commission of the crime.

In *Commonwealth* vs. *Ryan* (134 Mass., 224,) referring to this last case, the court says:

> The presiding justices excluded the evidence, and the full court held that it was within their discretion to determine whether the evidence offered was so remote in time, or so insignificant in character, as to furnish no aid in deciding the fact to be found.

It is submitted that it was largely within the discretion of the court to determine whether the threats here sought to be proven were so remote in their tendency to show that House was guilty of the crime as not to be relevant. The total absence of any connection between House and the crime other than the threats made by him, shows that the court was fully justified in excluding from the consid-

eration of the jury what could have been of no assistance to them in determining the guilt of the defendant. The rule established in Massachusetts by the cases above cited is now the law of Texas, as will be seen from the language of the court of appeals of that State, as follows:

> The rule now established is that "investigation with reference to other parties than the accused should not be permitted in cases, either positive or circumstantial, unless the inculpatory facts are such as are proximately connected with the transaction. In other words, to show remote acts or threats would not be admissible unless there were other facts also in proof proximately and pertinently connecting such third party with the homicide at the time of its commission." (*McIntuirf* v. *The State*, 20 Tex., App. 335; *Kunde* v. *State*, 22 Tex., App. 65, 97.)

Sixth ground.

The sixth ground for a new trial contains eighteen objections to the charge, the examination of which will be postponed until after a consideration of the other grounds.

Seventh ground.

The seventh ground is as follows:

> Because there was error in the selection of the jury, to the prejudice of defendant, in that the defendant was required to make his challenges from the jurors presented without first knowing what challenges the Government's attorney had made, and thus defendant challenged two jurors, to wit, C. F. Needles and Samuel Lawrence, who were also challenged by the Government's attorney, whereby the defendant was deprived of two of his challenges contrary to law.

The empanneling of the jury is given on pages 6, 7, and 8 of the record. It appears that the twenty men challenged by the defendant did not sit upon the jury; but it appears that the Government challenged two of these men also. The claim of the defendant is that he ought to have been informed of these challenges of the Government, so that he might exercise two other challenges against other men upon the jury.

In the first place, no attempt was made by him to challenge any other men on the jury. No objection was made by him to the course pursued by the court in not permitting him to know whom the Government would challenge. No exception was taken to that course. No error, therefore, can be assigned. It does not appear, either, whether the challenges made by the defendant were before those made by the Government or not. If they were, it is not seen how the defendant was prejudiced, and in the absence of any showing what was the fact in this respect he can not now complain.

Eighth ground.

The eighth ground is "because the court did not instruct the jury in writing."

There is no law requiring the court to instruct the jury in writing; no request was made for a written charge, and no exception was taken to the course of the court in orally charging the jury. (Rec., bottom of p. 286.)

Ninth ground.

The ninth ground is "because the court did not instruct the jury at the close of the evidence and before argument by counsel."

There is no rule of law which requires the instruction of the jury before the argument. This is a matter of procedure in the conduct of the trial wholly within the discretion of the court. Moreover, no request was made by the defendant that the court should instruct the jury before the argument, and no exception was taken to the delay of the charge by the court until after the argument.

Tenth ground.

The tenth ground is "because the defendant was not served with a list of the witnesses against him prior to his trial within the time prescribed by law."

There is nothing in the record to show that a list of the witnesses was not served upon the defendant. On the contrary, upon page 3 of the Record, we find it recited in the minutes of the court that it appears "from the returns of the marshal that the said defendant has been served with a duly certified copy of the indictment in this cause, and a full and complete list of the witnesses in this cause, and has also been served with a full and complete list of the petit jury, as selected and drawn by the jury commissioners for the present term of this court, more than two entire days heretofore."

The ground of the objection therefore is absolutely without foundation. Even if proper service had not been made, the objection would have been waived by the defendant in pleading to the indictment without making the point. (*U. S.* v. *Cornell*, 2 Mason, 91; *U. S.* v. *Curtis*, 4 Mass., 232.)

Eleventh ground.

The eleventh ground is "because the defendant was not served with a panel of the jurors prior to his trial within the time prescribed by law."

This objection is to be met exactly as the tenth has been, and is entirely refuted by the quotation from the minutes above given.

Twelfth ground.

The twelfth ground is "because the court did not require the Government's attorney to open the argument to the jury, as required by law."

It appears from the record (p. 256) that the court permitted the district attorney to waive his opening argument of the case. To this action the counsel for the defendant at the time offered no objection, and took no exception. There being no exception, the course of the court in this respect can not be assigned as error. Even if there had been an exception, however, it would present nothing which this court could consider. It is part of the conduct of the trial wholly within the discretion of the court below. It has been frequently decided by this court that the ruling of the trial court, as to the time when, or the order in which, counsel shall address the jury, is a question of practice wholly within the discretion of that court, and not reviewable in the Supreme Court. (*Lancaster* vs. *Collins*, 115 U. S., 222; *Day* vs. *Woodworth*, 13 How., 363.)

Thirteenth ground.

The thirteenth ground is that "the court required defendant's two attorneys to make two separate arguments and open the argument, prior to any argument by the Government's attorney, giving them no chance to reply to any matter stated in the argument of the Government's attorney, contrary to law."

It may be stated as a matter of fact outside of the record that the course pursued in the western district of Arkansas is to have the counsel for the United States open the case fully before the evidence is introduced. When the evidence is closed, if in the judgment of the court the district attorney has made in the opening of the case by way of a statement of it a full and complete statement of all the facts and the law upon which he relies, the court permits him to waive the opening argument in summing up the case. The presumption is that such a statement was made here. In any event, no exception was reserved to the course of the court below, and as we have seen in considering the last ground, the order of argument was wholly within the discretion of the court below and not reviewable here.

Sixth ground.

We return now to the sixth ground of the motion for a new trial which recites eighteen objections to the charge. The main reason why this ground has no weight, and can not be urged here, is that no exception or objection, general or special, was made or taken to the charge of the court at the time it was delivered, or before verdict was rendered. It is therefore entirely beyond the power of

this court to consider whether the charge is in any of its parts erroneous or not. Upon this point the language of Mr. Chief-Justice Waite, in the case of *Railway Company* vs. *Heck* (102 U. S., 120), is exactly in point. The Chief Justice said:

> It does not appear from this record that any exceptions were taken in the progress of the trial to what was done by the court below. Nearly three weeks after the trial was concluded, and a verdict rendered, a motion was made for a new trial, because of certain alleged errors in the charge; but it is nowhere shown that they were noted or brought to the attention of the court before the verdict. Certainly no exceptions were taken. A trial court may, in the exercise of its judicial discretion, grant a new trial, if convinced that its charge was wrong, even though its attention was not called to the error complained of before the case was finally submitted to the jury. But not so with us. Our power is confined to exceptions actually taken at the trial. The theory of a bill of exceptions is that it states what occurred while the trial was going on. Time is usually given to put what was done into an appropriate form for the record; but unless objection was made and exception taken before verdict, no case is presented for review here of the rulings at the trial. This has been settled in this court since *Walton* vs. *United States*, 9 Wheat., 651. The cases are numerous to that effect.
>
> We have uniformly held that as a motion for new trial in the courts of the United States is addressed to the discretion of the court that tried the cause, the action of that court in granting or refusing to grant such a motion can not be assigned for error here. (*Schuchardt* vs. *Allens*, 1 Wall., 359; *Insurance Company* vs. *Barton*, 13 Wall., 603.)

Passing over, however, the absence of lawful exceptions and coming to consider the objections as made, it is first to be observed that they are so made by reference to lines in the original charge, and that these have been so changed in the making of the transcript that it is almost impossible to determine what the passages are of which complaint is made.

The first is that the court erred in that—

> The court stated to the jury in its charge, page 1, lines 2 to 6, "and is charged with being guilty of murder, because on the 21st day of October, 1889, in the Creek Nation, he took the life of David C. Steadman," in thus stating as a fact to the jury what was the material and controverted issue in the case.

Did these words stand alone there might perhaps be an ambiguity in their construction, but the context, and everything in the charge, shows that the clause beginning "because" and ending "Steadman" is the subject of the charge made, and the meaning of the sentence clearly is that he is charged with being guilty of the murder by taking the life of David C. Steadman.

The second objection is that "on page 4, lines 7 to 18," "the instructions of the court are misleading and argumentative, calling special attention to the inculpatory facts without any mention of those facts which were exculpatory."

It is impossible to determine what particular passage is alluded to in this objection.

The third objection is to the language of the court contained in the last half of page 258 of the record, in which the judge instructed the jury that it is necessary for

the good of society that due weight be given to circumstantial evidence in the trial and conviction of crime. The words particularly objected to are as follows:

> It shows with great force how futile, and I was about to say, nonsensical, is the position sometimes assumed, that if we can not find positive evidence of the commission of a crime like murder, we are to stop the wheels of justice—stand idly by and let streams of blood flow past us, running from murderous wounds, inflicted by the vicious and the bad, the vile and the wicked.

This was a strong presentation to the jury of the necessity, in the interest of society, for allowing circumstantial evidence to warrant conviction of crime. Several passages of the same kind will be found throughout the charge. Quotations from high authority to the same effect are made by the judge. Such remarks are clearly within the discretion of the trial court, provided they do not go to the extent of an appeal to the passions of the jury. It is the commonest practice of lawyers engaged in the defense of persons charged with crime, where the proof for the prosecution is wholly circumstantial, to attempt to frighten juries out of a verdict against the defendant by referring to historical cases where the proof of the circumstances seemed conclusive of guilt, but subsequent developments proved them to be misleading and the conclusion false.

To meet such an argument, which is hardly fair, it would seem to be quite proper for a court to caution a jury as to the absolute necessity of following their reason in reaching a conclusion upon circumstantial evidence and of giving effect to that conclusion in their verdict, unin-

fluenced by fear that a combination of circumstances, which leaves no reasonable doubt of guilt, may, by some wonderful series of coincidences, for the existence of which there is no reasonable ground shown by the evidence, lead to a wrong conclusion.

In determining the fairness of this charge, full weight must be given to the fact that the murder was committed in a country where deeds of violence are of everyday occurrence; where a man's life is not regarded as of the value of that of a horse; where public sentiment needs to be quickened to the necessity for a strict and severe administration of justice. It is a country where every man goes armed, and where men depend for the protection of their lives and property rather upon the quickness with which they can aim and pull the trigger, than upon the processes of the law. Nowhere else in the United States is there such a hot-bed of crimes like murder and robbery as in the country where this homicide was committed. It would seem, therefore, to be eminently proper for a judge in the trial of a case like this, in a community like this, to call the jury's attention to the consequences of a failure of justice caused by the fear of juries to convict on circumstantial evidence, however conclusive. In *Reynolds* vs. *U. S.* (98 U. S., 145), which was a prosecution for bigamy, the court told the jury to—

> Consider what are to be the consequences to the innocent victims of this delusion [the doctrine of polygamy]. As this contest goes on, they multiply; and there are pure-minded women, and there are innocent children—innocent in a sense even beyond the degree of the innocence of childhood itself—these are to be the sufferers; and as jurors fail to do

> their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land.

It was held that this charge was not improper, and was not an appeal to the passions of the jury, or an instigation of prejudice, but was only a reminder of the duty which they had to perform.

It is impossible to run through the charge—which is very lengthy—in a brief like this, and take up the effect of each sentence. Suffice it to say that the court considered at length every element necessary to make the crime of murder; told the jury in a number of places in the charge that it was necessary for them to find each element to exist beyond a reasonable doubt, and in every instance ultimately left to the decision of the jury the question of fact.

It may be conceded that the tenor of the charge indicates that the judge believes in the guilt of the accused. He comments on parts of the evidence but always ultimately leaves the consideration of its weight to the jury. It has been decided by the Supreme Court of the United States over and over again that it is not error for the court to comment upon the facts, to call special attention of the jury to certain facts, or to express an opinion upon those facts, provided that the question of fact is ultimately left to the decision of the jury. In the language of Mr. Justice Gray, in the case of *Vicksburg, etc., R. R. Co.* vs. *Putnam* (118 U. S., 445–553), the principle is stated as follows:

> In the courts of the United States, as in those of England, from which our practice was derived, the

> judge, in submitting a case to the jury, may, in his discretion, whenever he thinks it necessary to assist them in arriving at a just conclusion, comment upon the evidence, call their attention to parts of it which he thinks important, and express his opinion upon the facts; and the expression of such an opinion, when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to the determination of the jury, can not be reviewed on writ of error.

See also *Lorejoy* vs. *U. S.*, 128 U. S., 171–173; *Rucker* vs. *Wheeler*, 127 U. S., 85, 93; *St. Louis, &c., Railway Co.* vs. *Vickers*, 122 U. S., 360; *Carver* vs. *Jackson*, 4 Pet. 1–80; *Magniac* vs. *Thomson*, 7 Pet., 348, 390; *Mitchell* vs. *Harmony*, 13 How., 115–131; *Transportation Line* vs. *Hope*, 95 U. S., 297–302; Taylor on Evidence, sec. 25.

It is true that none of these are criminal cases. This is because the Supreme Court has had in recent years no jurisdiction in error over that class of cases. But this principle is derived from the practice prevailing in English courts; and it is a matter of common knowledge that English judges always sum up the case in favor of one side or the other, and never fail to express an opinion upon the facts of the case.

In the eleventh and twelfth objections complaint is made that the court misled the jury by referring to the brother of the deceased, in a manner calculated to prejudice them against the rights of the defendant. The passage in question is to be found on page 278 of the record. The caution therein administered was a proper one. It is to be inferred from the charge that counsel for the defense had made an attack upon the brother of the

deceased, who was present in court, and who had taken an interest in securing evidence in the case. There was not the slightest evidence to show that the interest which he he had taken was in any degree improper, or that he sought to influence witnesses to state anything other than what they knew.

We conceive it to be the duty of the court in its charge to meet and correct any appeal to the jury which is not based on the evidence. The mere fact that Steadman's brother took an interest in the prosecution of the man whom he supposed to be the murderer, was present in court, and had talked with one or two witnesses, certainly could not justify an appeal to the jury that the witnesses were suborned or influenced improperly. The remarks of the court are emphatic, but it is respectfully submitted that they are quite within the discretion of the court in meeting such an unfair argument as was evidently made.

Objection is also made to the fact that the court instructed the jury to view the case from the standpoint of the defendant's guilt.

This is an unfounded criticism. The court does comment in the charge to the jury on the consideration which they are to give to the conduct of the defendant after the killing occurred, and after full weight has been given to the accusatory facts offered against him by the Government. The passage is as follows (page 277):

> But now, when you are looking at his conduct after the killing, from the theory or standpoint of his guilt, *if there is such a position in this case as to afford you a proposition of that kind to stand upon*, you are not to look for consistent and reasonable action upon his part,

> because when a man commits a crime of this kind, a crime which is characterized by the elements which go to make up murder, he becomes blinded to his own interest, as it were; he becomes blinded to that state of case that would protect him from punishment, and the very acts that he does for the purpose of covering up the thing as affecting him are acts that may be looked at by the jury, and are of such a character as to bring guilt to him. He acts irrationally. In other words, he is not in a normal condition.

This was simply a fair comment upon the evidence as to the defendant's conduct subsequent to the killing on the hypothesis that the evidence up to that point had pointed in the minds of the jury to the guilt of the defendant. The italicized words show the hypothetical character of the statement.

The sixteenth objection is that the court failed "to instruct the jury that it is the policy of the law that they are to believe defendant innocent until he has been proven beyond a reasonable doubt to be guilty as charged in the indictment."

On page 273 of the record, on page 286, and on page 284, and in other places in the charge, the jury were instructed that it was necessary for them to find every necessary element in the crime proven beyond a reasonable doubt. That, it is submitted, is sufficient.

On the whole record, it is submitted, there is no error, and that the judgment of the court below should be affirmed.

WM. H. TAFT,
Solicitor-General.